



Australian Capital Territory

Fisheries Act 2000

A2000-38

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Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Fisheries Act 2000* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 February 2009. It also includes any amendment, repeal or expiry affecting the republished law to 2 February 2009.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Fisheries Act 2000

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Australian Capital Territory

Fisheries Act 2000

An Act about the management of fisheries

Part 1 Preliminary

1 Name of Act

This Act is the *Fisheries Act 2000*.

3 Objects

The objects of this Act are—

- (a) to conserve native fish species and their habitats; and
- (b) to manage sustainably the fisheries of the ACT by applying the principles of ecologically sustainable development mentioned in the *Environment Protection Act 1997*, section 2 (2); and
- (c) to provide high quality and viable recreational fishing; and
- (d) to cooperate with other Australian jurisdictions in sustaining fisheries and protecting native fish species.

4 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary defines certain terms, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*fishing closure*—see section 13' means the term 'fishing closure' is defined in section 13.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act*, s 155 and s 156 (1)).

4A Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

4B Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Fisheries management plan

5 Content of fisheries management plan

A fisheries management plan must include—

- (a) a description of fish species and their habitats in the ACT; and
- (b) a description of current and potential threats to fish species and their habitats; and
- (c) measures to be taken to achieve the objects of this Act, including performance indicators and monitoring methods; and
- (d) guidelines to which the conservator must have regard in exercising functions under this Act.

6 Preparation of fisheries management plan

The conservator must prepare a draft management plan for management of fish species and their habitats in the ACT.

Note A power given under an Act to make a statutory instrument (including a management plan) includes power to amend or repeal the instrument (see Legislation Act, s 46 (1)).

7 Consultation on draft plan

- (1) If the conservator prepares a draft fisheries management plan, the conservator must prepare a written notice—
 - (a) containing a brief description of the draft plan; and
 - (b) stating where copies of the draft plan may be obtained; and

- (c) inviting written suggestions or comments about the draft plan to be given to the conservator, at the place stated in the notice, within 60 working days after the day the notice is notified under the Legislation Act (the *consultation period*).

Note For how documents may be given, see Legislation Act, pt 19.5.

- (2) The notice is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the Legislation Act.

Note 2 An amendment or repeal of a management plan is also a notifiable instrument (see Legislation Act, s 46 (2)).

- (3) The conservator must also publish the notice in a newspaper.

8 Consideration of suggestions etc and revision of draft plan

- (1) The conservator must consider the suggestions and comments given to the conservator during the consultation period about the draft plan.
- (2) The conservator may, in writing, revise the draft plan in accordance with any of the suggestions or comments.

8A Formal changes to draft plan

- (1) Sections 7 (Consultation on draft plan) and 8 (Consideration of suggestions etc and revision of draft plan) do not apply to an amendment of a management plan that only makes changes of a formal nature.
- (2) If the conservator makes an amendment of a management plan that only makes changes of a formal nature, the conservator must prepare a written notice containing a brief description of the changes.
- (3) The notice is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

- (4) The conservator must also publish the notice in a newspaper.

9 Submission of draft plan to Minister

The conservator must give a draft management plan (as revised under section 8 (2)) to the Minister for approval, together with—

- (a) a written report setting out the issues raised in any written comments given to the conservator about the draft; and
- (b) a written report about the conservator's consultation with the public and with any particular entity about the draft.

10 Minister's powers about draft plan

On receiving a draft fisheries management plan, the Minister may—

- (a) make a fisheries management plan in the form of the draft plan; or
- (b) refer the draft plan to the conservator together with any of the following written directions:
 - (i) to conduct further stated consultations;
 - (ii) to consider any stated revision suggested by the Minister;
 - (iii) to revise the draft plan in a stated way.

11 Referral back of draft plan to conservator

- (1) If the Minister refers the draft fisheries management plan to the conservator, the conservator—
- (a) must comply with the Minister's directions; and
 - (b) if the Minister directs the conservator to conduct further consultations or consider suggested revisions—may revise the draft plan in the way the conservator considers appropriate; and
 - (c) may revise the plan to make changes of a formal nature; and

- (d) must give the draft plan (as revised) to the Minister together with a written report about the conservator's compliance with the Minister's directions and any revision of the draft plan under paragraph (b) or (c).
- (2) The Minister must deal with the draft fisheries management plan (as revised) under section 10 (Minister's powers about draft plan).

12 Fisheries management plan disallowable instrument etc

- (1) A fisheries management plan is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) Unless a fisheries management plan is disallowed by the Legislative Assembly, the plan commences—
 - (a) on the day after the last day when it could have been disallowed; or
 - (b) if the determination provides for a later date or time of commencement—on that date or at that time.

Part 3 Fishing closures and declarations

13 Fishing closures

- (1) The Minister may, in writing, prohibit absolutely or conditionally, the taking of fish from public waters for a stated period.
- (2) A prohibition under subsection (1) is a *fishing closure*.
- (3) A prohibition under subsection (1) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

14 Declaration of noxious fish

- (1) The Minister may, in writing, declare a species of fish to be noxious.
- (2) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

15 Declaration of fish of prohibited size or weight

- (1) The Minister may, in writing, declare that fish of stated sizes or weights are fish of prohibited sizes or weights.
- (2) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

16 Declaration of fish quantity

- (1) The Minister may, in writing, declare the quantity of a species of fish that a person may take in a day.
- (2) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

17 Declaration of fishing gear

- (1) The Minister may, in writing, declare fishing gear that may be used for taking fish.
- (2) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Part 4 Licences

Division 4.1 Kinds of licences

19 Kinds of licences

The conservator may issue the following kinds of licences:

- (a) commercial fishing licences;
- (b) scientific licences;
- (c) import and export licences;
- (d) priority species licences.

20 Commercial fishing licences

A commercial fishing licence authorises the licensee to take fish for sale.

21 Scientific licences

A scientific licence authorises the licensee to take fish for purposes stated in the licence that are—

- (a) scientific purposes; or
- (b) teaching purposes; or
- (c) museum or aquarium purposes.

22 Import and export licences

An import and export licence authorises the licensee to import live fish into and export live fish from the ACT.

22A Priority species licences

A priority species licence authorises the licensee to do 1 or more of the following in relation to a commercial quantity of fish of a priority species:

- (a) sell the fish;
- (b) possess or gain possession or control of the fish for sale;
- (c) receive the fish;
- (d) process the fish.

Division 4.2 Issue of licences

23 Applications for licences

An application for a licence must be given to the conservator.

Note 1 A fee may be determined under s 114 for this section.

Note 2 If a form is approved under s 115 for an application, the form must be used.

Note 3 For how documents may be given, see Legislation Act, pt 19.5.

24 Additional information may be required

- (1) The conservator may, by written notice given to the applicant, require the applicant to give the conservator additional stated information or documents that the conservator reasonably needs to decide the application.

Note For how documents may be given, see Legislation Act, pt 19.5.

- (2) The conservator is not required to decide an application until the applicant complies with the requirement.

25 Decision on application

The conservator must, on application being made under section 23—

- (a) issue a licence; or
- (b) refuse to issue a licence.

26 Issue of commercial fishing licences—relevant considerations

- (1) In deciding whether to issue a commercial fishing licence, the conservator must consider—
 - (a) whether the applicant has been convicted, or found guilty, of an offence against this Act, the *Nature Conservation Act 1980*, part 4, or a law of a State corresponding to this Act or that part; and
 - (b) the methods and fishing gear the applicant proposes to use to take fish; and
 - (c) the catch limit proposed by the applicant; and
 - (d) the waters where the applicant proposes to take fish; and
 - (e) the periods when the licence is proposed to be in force; and
 - (f) the potential effect on the relevant fisheries and the environment of issuing the licence.
- (2) Subsection (1) does not limit the matters the conservator may consider in deciding whether to issue a commercial fishing licence.

27 Issue of scientific licences—relevant considerations

- (1) In deciding whether to issue a scientific licence, the conservator must consider—
 - (a) if the application is for a licence for research purposes—whether the *Animal Welfare Act 1992*, part 4 would apply to the activity proposed to be undertaken under the licence and, if so, whether the activity has been authorised under that part; and
 - (b) if the application is for a licence for collection purposes—the methods and fishing gear proposed to be used by the applicant for taking fish and the species and number of fish proposed to be taken; and
 - (c) the potential effect on the relevant fisheries and the environment of issuing the licence.
- (2) Subsection (1) does not limit the matters the conservator may consider in deciding whether to issue a scientific licence.

28 Import and export licences—relevant considerations

- (1) In deciding whether to issue an import and export licence, the conservator must consider—
 - (a) whether the applicant has been convicted, or found guilty, of an offence against this Act, the *Nature Conservation Act 1980*, part 4, or a law of a State corresponding to this Act or that part; and
 - (b) if the licence is to authorise the applicant to import fish—
 - (i) the qualifications and experience of the applicant in relation to handling and keeping fish; and
 - (ii) the suitability of the place where the applicant intends to keep fish; and

- (iii) the suitability of the applicant's facilities for keeping fish; and
 - (iv) the likelihood that the fish could be a threat to fish in waters of the ACT or be otherwise harmful; and
 - (c) if the licence is to authorise the applicant to export fish—the extent to which export of the fish under the licence may affect the viability of any fish species in the ACT; and
 - (d) whether fish that may be imported or exported under the licence are subject to a declaration under the *Nature Conservation Act 1980*, section 33, section 34 or section 38; and
 - (e) how fish to be imported or exported under the licence would be transported.
- (2) Subsection (1) does not limit the matters the conservator may consider in deciding whether to issue an import and export licence.

28A Issue of priority species licences—relevant considerations

- (1) In deciding whether to issue a priority species licence, the conservator must consider—
- (a) whether the applicant has been convicted, or found guilty, of an offence against this Act, the *Nature Conservation Act 1980*, part 4, or a law of a State corresponding to this Act or that part; and
 - (b) how fish of a priority species would be stored and transported; and
 - (c) the impact of issuing the licence on the availability of fish of a priority species.
- (2) Subsection (1) does not limit the matters the conservator may consider in deciding whether to issue a priority species licence.

29 Terms of licences

- (1) A commercial fishing licence and an import and export licence are issued for a term of 1 year.
- (2) A scientific licence is issued for the term of not longer than 3 years stated in the licence.
- (2) A scientific licence and a priority species licence are issued for the term of not longer than 3 years stated in the licence.

30 Licence conditions and exemptions

- (1) A licence is subject to any conditions stated in the licence.
- (2) Without limiting subsection (1), a licence may be issued subject to conditions about—
 - (a) the number of fish that may be taken; or
 - (b) the waters where the fish may be taken; or
 - (c) the times or periods when the licence is to have effect; or
 - (d) the ways in which fish may be taken under the licence; or
 - (e) the species of fish that may be taken.
- (3) A scientific licence may, either absolutely or conditionally, exempt the licensee from the application of a declaration under part 3.

Note A reference to a statutory instrument (including a declaration) includes a reference to a provision of a statutory instrument (see Legislation Act, s 13 (3)).

31 Licence changes

- (1) On application by the holder of a licence, the conservator may change the licence.
- (2) If the conservator changes a licence under subsection (1), the conservator must give written notice of the change to the licensee.

Note For how documents may be given, see Legislation Act, pt 19.5.

- (3) The conservator may change a licence on his or her own initiative if the conservator is satisfied that it is in the public interest to do so.
- (4) Before changing a licence on his or her own initiative, the conservator must give the licensee a written notice—
 - (a) stating how the conservator proposes to change the licence; and
 - (b) stating the reasons why the conservator proposes to change the licence; and
 - (c) telling the licensee that the licensee may, within 14 days beginning on the day after receiving the notice, give a written response to the conservator about the matters stated in the notice.
- (5) In deciding whether to change the licence as proposed, the conservator must consider any response given to him or her in accordance with subsection (4) (c).
- (6) The conservator must give the licensee written notice of his or her decision.
- (7) A change of licence takes effect on the day when the notice is served on the licence holder or, if the notice states a later date of effect, that date.

32 Rights given by licences

A licence does not authorise the licensee to enter on—

- (a) land held under a lease; or
- (b) land occupied by a person under a licence from the Territory or the Commonwealth.

33 Surrender of licences

- (1) A licensee may surrender his or her licence by written notice to the conservator.

Note For how documents may be given, see Legislation Act, pt 19.5.

- (2) The surrender of a licence takes effect from the day the notice of surrender is given to the conservator or, if the notice states a later date of effect, that date.

34 Cancellation of licences

- (1) The conservator may cancel a licence if—
- (a) the conservator becomes aware of circumstances that, if the conservator had been aware of them at the time of the application for the licence, would have resulted in the application being refused; or
 - (b) the licensee is convicted, or found guilty, of an offence against this Act, the *Nature Conservation Act 1980*, part 4, or a law of a State corresponding to this Act or that part; or
 - (c) the licensee contravenes a condition of the licence; or
 - (d) the licence was obtained by fraud or misrepresentation.
- (2) Before cancelling a licence, the conservator must give the licensee a written notice—
- (a) stating the grounds on which the conservator proposes to cancel the licence; and
 - (b) stating the facts that, in the conservator's opinion, establish the grounds; and
 - (c) telling the licensee that the licensee may, within 14 days beginning the day after receiving the notice, give a written response to the conservator about the matters in the notice.

Note For how documents may be given, see Legislation Act, pt 19.5.

- (3) In deciding whether to cancel the licence, the conservator must consider any response given to him or her in accordance with subsection (2) (c).
- (4) The conservator must give the licensee written notice of the conservator's decision.
- (5) Cancellation of a licence takes effect on the day when notice of the cancellation is served on the licence holder or, if the notice states a later date of effect, that date.

35 Register of licences

- (1) The conservator must prepare and keep a register of licences.
- (2) The conservator must include in the register the name of each person to whom a licence is issued, the kind of licence issued to the person, any conditions to which the licence is subject and any exemption from the application of a declaration under part 3 given to the licensee.

36 Inspection of register

- (1) A person may, without charge, inspect the register during the office hours of the office of the conservator.
- (2) A person may, on payment of the reasonable copying costs, obtain a copy of all or part of the register.

Part 5 Commercial dealing

Division 5.1 Fish dealers

37 Fish dealers to be registered

- (1) A person commits an offence if—
- (a) the person receives, within the period prescribed by regulation, more than the prescribed number of fish; and
 - (b) the person is not registered as a fish dealer under this Act; and
 - (c) the person does not receive the fish from a person who is—
 - (i) registered as a fish dealer under this Act; or
 - (ii) registered or licensed as a fish dealer under a corresponding law.

Maximum penalty: 50 penalty units.

- (2) This section does not apply to the person if—
- (a) the fish are received for retail sale; or
 - (b) the fish are received for purposes other than sale.
- (3) An offence against this section is a strict liability offence.
- (4) In this section:
fish does not include oysters.

38 Application for registration

An application for registration as a fish dealer must be given to the conservator.

Note 1 A fee may be determined under s 114 for this section.

Note 2 If a form is approved under s 115 for an application, the form must be used.

Note 3 For how documents may be given, see Legislation Act, pt 19.5.

39 Decision on application

- (1) The conservator must, on application being made under section 38—
 - (a) register the applicant as a fish dealer; or
 - (b) refuse to register the applicant.
- (2) In deciding whether to register an applicant, the conservator must consider whether the applicant has been convicted, or found guilty, of an offence against this Act or a law of a State corresponding to this Act.
- (3) Subsection (2) does not limit the matters the conservator may consider in deciding whether to register an applicant.

40 Term of registration

The registration of a person as a fish dealer is for the term of not longer than 7 years stated in the register in relation to the person.

41 Suspension of registration

If a registered fish dealer fails to give information in accordance with a notice under section 49 (3), the conservator may, by notice in writing given to the dealer, suspend the dealer's registration.

Note For how documents may be given, see Legislation Act, pt 19.5.

42 Cancellation of registration

The conservator may cancel a fish dealer's registration if—

- (a) the dealer is convicted, or found guilty, of an offence against this Act, or a law of a State corresponding to this Act; or
- (b) the dealer's registration has been suspended for failure to give information in accordance with a notice under section 49 (3) and the dealer has failed to give that information within 14 days after the day of suspension.

43 Register of dealers

- (1) The conservator must prepare and keep a register of fish dealers.
- (2) A person is registered as a fish dealer if the conservator enters in the register—
 - (a) the person's name; and
 - (b) if the person carries on business in the ACT as a fish dealer under a name other than his or her own name—the name under which he or she so carries on business; and
 - (c) each place in the ACT where the person carries on business as a fish dealer.

44 Inspection of register

- (1) A person may, without charge, inspect the register during the office hours of the office of the conservator.
- (2) A person may, on payment of the reasonable copying costs, obtain a copy of all or part of the register.

Division 5.2 Commercial fishers

45 Sale of fish by commercial fishers

- (1) The holder of a commercial fishing licence under this Act or a corresponding law must not sell in a day more than the quantity of fish prescribed by regulation.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) does not apply in relation to any quantity of fish sold to a person who is registered or licensed as a fish dealer under this Act or a corresponding law.

- (3) In this section:

fish does not include oysters.

Part 6 **Records and information**

Division 6.1 **Keeping records and giving information**

46 **Commercial fishers, priority species licence holders and fish dealers to make records**

- (1) The holder of a commercial fishing licence must—
- (a) make a record of all fish the holder takes or sells; and
 - (b) if a direction is in force under subsection (6) in relation to the record—make the record in accordance with the direction.

Maximum penalty: 10 penalty units.

- (2) The holder of a priority species licence must—
- (a) make a record of all fish of a priority species the holder receives or sells; and
 - (b) if a direction is in force under subsection (6) in relation to the record—make the record in accordance with the direction.

Maximum penalty: 50 penalty units.

- (3) A fish dealer must—
- (a) make a record of all fish the dealer receives, processes or sells; and
 - (b) if a direction is in force under subsection (6) in relation to the record—make the record in accordance with the direction.

Maximum penalty: 10 penalty units.

- (4) Subsections (1), (2) and (3) apply whether or not—
 - (a) the fish were sold to a purchaser within the ACT; or
 - (b) the fish were taken from waters in the ACT.
- (5) An offence against this section is a strict liability offence.
- (6) The conservator may, in writing, give directions about how records under subsection (1), (2) or (3) must be made.
- (7) An instrument under subsection (6) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

47 Keeping of records by commercial fishers, priority species licence holders and fish dealers

- (1) If a person makes a record as required under section 46 (1), the person must keep the record for at least 5 years.
Maximum penalty: 10 penalty units.
- (2) If a person makes a record as required under section 46 (2), the person must keep the record for at least 5 years.
Maximum penalty: 50 penalty units.
- (3) If a person makes a record as required under section 46 (3), the person must keep the record for at least 5 years.
Maximum penalty: 50 penalty units.
- (4) An offence against this section is a strict liability offence.

48 Production of records to conservation officers

- (1) If a person who is required under section 47 to keep a record is asked to produce the record by a conservation officer, the person must produce the record to the conservation officer.
Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.

49 Commercial fishers, priority species licence holders and fish dealers to supply information

- (1) The conservator may, by written notice to the holder of a commercial fishing licence, require the licence holder to give the conservator, within a reasonable time stated in the notice, the information about the fish taken or sold by him or her stated in the notice.

Note 1 For how documents may be given, see the Legislation Act, pt 19.5.

Note 2 For offences in relation to giving false or misleading information to a person exercising a function under a Territory law etc, see the Criminal Code, pt 3.4 (False or misleading statements, information and documents).

- (2) The conservator may, by written notice to the holder of a priority species licence, require the licence holder to give the conservator, within a reasonable time stated in the notice, the information about the fish received or sold by him or her stated in the notice.
- (3) The conservator may, by written notice to a fish dealer, require the dealer to give the conservator, within a reasonable time stated in the notice, the information about the fish received, processed or sold by him or her stated in the notice.
- (4) If a person is given a notice under subsection (1), (2) or (3), the person must give the conservator the information stated in the notice within the time stated in the notice.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (5) Subsection (4) does not apply if the person has a reasonable excuse.
- (6) An offence against this section is a strict liability offence.

Division 6.2 Powers in relation to records

51 Possession of records

- (1) If records are produced to a conservation officer by a person under section 48, the officer may take possession of the records.
- (2) If the conservation officer takes possession of the records, the officer must—
 - (a) offer the person a receipt for the records; and
 - (b) allow a person who would be entitled to inspect the records if they were not in the possession of the officer, at any reasonable time, to inspect them.

52 Copying and keeping records etc

- (1) If a conservation officer takes possession of records under section 51, the officer may—
 - (a) make copies of, or take extracts from, the records; and
 - (b) if the officer has reason to believe the records are evidence of an offence against this Act—keep the records until proceedings for the offence have been dealt with.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) A conservation officer who takes possession of records under section 51 must, unless subsection (1) (b) applies, return the records to the person from whom they were taken within a reasonable time.

Part 7 **Conservation officer's powers**

Note for pt 7

The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

Division 7.1 **Powers for places**

53 **Meaning of *occupier* for div 7.1**

In this division:

occupier, of a place, includes—

- (a) a person believed on reasonable grounds to be an occupier of the place; and
- (b) a person apparently in charge of the place.

54 **Entry to places**

- (1) A conservation officer may enter a place if—
 - (a) its occupier consents to the entry; or
 - (b) the entry is for a routine inspection under section 56; or
 - (c) the entry is authorised by a warrant.
- (2) An authorised officer may, without the occupier's consent or a warrant, enter the land around premises to ask its occupier for consent to enter the premises.

55 Consent to entry

- (1) This section applies if a conservation officer intends to ask an occupier of a place to consent to the officer or another conservation officer entering the place.
- (2) Before asking for the consent, the officer must tell the occupier—
 - (a) of the purpose of the entry; and
 - (b) that the occupier is not required to consent.
- (3) If the consent is given, the officer may ask the occupier to sign an acknowledgment of the consent.
- (4) The acknowledgment must state that—
 - (a) the occupier was told—
 - (i) of the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
 - (b) the occupier gives a conservation officer consent to enter the place and exercise powers under this Act; and
 - (c) the time and date the consent was given.
- (5) If the occupier signs an acknowledgment of consent, the officer must immediately give a copy to the occupier.
- (6) Subsection (7) applies to a court if—
 - (a) a question arises, in a proceeding in the court, whether the occupier of a place consented to a conservation officer entering the place under this Act; and
 - (b) an acknowledgment under this section is not produced in evidence for the entry; and
 - (c) it is not proved that the occupier consented to the entry.
- (7) The court may presume that the occupier did not consent.

56 Routine inspection of business premises

- (1) To find out whether this Act is being complied with, a conservation officer may enter business premises of a fish dealer or the holder of a commercial fishing licence at any time the premises are being used.
- (2) In this section:
business premises includes residential premises used for business purposes.

57 Warrants to enter

- (1) A conservation officer may apply to a magistrate for a warrant to enter a place.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity (the evidence) that may provide evidence of an offence against this Act; and
 - (b) the evidence is, or may be within the next 14 days, at the place.
- (5) The warrant must state—
 - (a) that a conservation officer may, with necessary help and force, enter the place and exercise the officer's powers under this Act; and
 - (b) the offence for which the warrant is sought; and
 - (c) the evidence that may be seized under the warrant; and

- (d) the hours when the place may be entered; and
- (e) the date, within 14 days after the warrant's issue, the warrant ends.

58 Warrants—application made other than in person

- (1) A conservation officer may apply for a warrant by phone, fax, radio or other form of communication if the officer considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances.
- (2) Before applying for the warrant, the officer must prepare an application stating the grounds on which the warrant is sought.
- (3) The officer may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the officer if it is reasonably practicable to do so.
- (5) If it is not reasonably practicable to fax a copy to the officer—
 - (a) the magistrate must—
 - (i) tell the officer what the terms of the warrant are; and
 - (ii) tell the officer the date and time the warrant was issued; and
 - (b) the officer must complete a form of warrant (*warrant form*) and write on it—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant's terms.

- (6) The facsimile warrant, or the warrant form properly completed by the officer, has the same effect as a warrant issued under section 57.
- (7) The officer must, at the first reasonable opportunity, send the magistrate—
 - (a) the sworn application; and
 - (b) if the officer completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) Subsection (10) applies to a court if—
 - (a) a question arises, in a proceeding in or before the court, whether a power exercised by a conservation officer was not authorised by a warrant issued under this section; and
 - (b) the warrant is not produced in evidence.
- (10) The court must presume that the exercise of a power was not authorised by a warrant issued under this section, unless the contrary is proved.

59 Powers on entry with consent

A conservation officer who enters a place with the occupier's consent may inspect, measure, photograph or film the place or anything in it.

60 Powers on entry for routine inspection of business premises

A conservation officer who enters a place under section 56 (Routine inspection of business premises) may—

- (a) inspect, measure, photograph or film the place or anything in it; or

- (b) test or take samples of anything in the place; or
- (c) take the people, equipment and materials the officer reasonably needs for exercising a power under this Act into the place.

61 Powers on entry under a warrant

- (1) A conservation officer who enters a place under section 57 (Warrants to enter) or section 58 (Warrants—application made other than in person) may—
 - (a) search any part of the place; or
 - (b) inspect, measure, photograph or film the place or anything in it; or
 - (c) test or take samples of anything in the place; or
 - (d) copy a document in the place; or
 - (e) take the people, equipment and materials the officer reasonably needs for exercising a power under this Act into the place; or
 - (f) require a person in the place to give the officer reasonable help to exercise the powers mentioned in paragraphs (a) to (e).
- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (f).

Maximum penalty: 50 penalty units.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

62 Identity cards must be produced

A conservation officer who enters a place under section 55 (Consent to entry), section 56 (Routine inspection of business premises) or section 57 (Warrants to enter) is not authorised to remain in the place if, when asked by the occupier, the officer does not produce his or her identity card.

63 Entry into waters, and along banks etc

A conservation officer may for this Act, at any time, pass along (with a boat or otherwise) any public waters or the banks or borders of any public waters or on land beside any public waters within a reasonable distance of the waters.

Division 7.2 Other powers

64 Power to require name and address

- (1) A conservation officer may require a person to state the person's name and home or business address if the conservation officer believes, on reasonable grounds, that the person is committing or has just committed an offence against this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) The conservation officer must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (3) The person may ask the conservation officer to produce his or her identity card for inspection by the person.
- (4) A person must comply with a requirement made of the person under subsection (1) if the conservation officer—
- (a) tells the person the reason for the requirement; and
 - (b) complies with any request made by the person under subsection (3).

Maximum penalty: 10 penalty units.

- (5) An offence against this section is a strict liability offence.

- (6) In this section:

home address, of a person, means the address of the place where the person usually lives.

65 Power to require gear to be removed from water

- (1) A conservation officer may require a person to remove any fishing gear being used by the person from waters if the officer believes on reasonable grounds that the gear is being used in contravention of this Act.
- (2) A person must comply with a requirement made of the person by a conservation officer under subsection (1) if the conservation officer complies with any request made by the person under subsection (4).

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) If a conservation officer who requires a person to remove fishing gear from water under subsection (1) is asked by the person to produce his or her identity card, the conservation officer must do so.

66 Seizure of fish etc

In addition to the other powers given to a conservation officer by this part or a warrant, a conservation officer may seize anything if the officer believes on reasonable grounds—

- (a) the thing is evidence of the commission of an offence against this Act; and
- (b) the seizure is necessary to prevent—
 - (i) the concealment, loss, death or destruction of the thing; or
 - (ii) the use of the thing in committing, continuing or repeating the offence.

67 Seizure and destruction of noxious fish

A conservation officer may seize and destroy any noxious fish in a person's possession.

Division 7.3 Other enforcement matters

68 Procedure after thing seized

- (1) As soon as practicable after a thing is seized by a conservation officer under this part, the officer must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the conservation officer must—
 - (a) leave the receipt at the place where the thing was seized; and
 - (b) ensure the receipt is left—
 - (i) in a reasonably secure way; and
 - (ii) in a conspicuous position.
- (3) The conservation officer must allow a person who would be entitled to the seized thing if it were not in the officer's possession—
 - (a) to inspect it; and
 - (b) if it is a document—to take extracts from it or make copies of it.
- (4) The conservation officer must return the seized thing to the person at the end of—
 - (a) 6 months; or
 - (b) if a prosecution for an offence involving it is started within 6 months—the prosecution for the offence and any appeal from the prosecution.
- (5) Despite subsection (4), the conservation officer must return the seized thing to the person immediately the officer stops being satisfied its retention as evidence is necessary.

- (6) However, the conservation officer may retain the seized thing if the officer believes, on reasonable grounds, that its continued retention is necessary to prevent its use in committing an offence against this Act.
- (7) This section does not apply to noxious fish seized under section 67 (Seizure and destruction of noxious fish).

69 Compensation

- (1) A person may claim reasonable compensation from the Territory if the person incurs loss or expense because of the exercise or purported exercise of a power under this part by a conservation officer or a person assisting a conservation officer.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) The regulations may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.
- (5) This section does not apply to noxious fish seized under section 67 (Seizure and destruction of noxious fish).

Part 8 Offences

Division 8.1 Unauthorised activities

74 Taking fish for sale without licence etc

- (1) A person who does not hold a commercial fishing licence commits an offence if the person takes fish from public waters with the intention of—
- (a) selling the fish; or
 - (b) processing the fish for sale.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) The holder of a commercial fishing licence commits an offence if—
- (a) the holder takes fish for processing or sale; and
 - (b) taking the fish is not permitted by the licence.

Maximum penalty: 50 penalty units.

- (3) Subsection (2) does not apply if—
- (a) the licence holder unintentionally takes the fish; and
 - (b) except for taking the fish, the licence holder's conduct does not contravene this Act; and
 - (c) the licence holder immediately returns the fish to the waters from which it was taken with the least possible injury.
- (4) An offence against subsection (2) is a strict liability offence.

75 Taking fish contrary to scientific licence

- (1) The holder of a scientific licence commits an offence if—
- (a) the holder takes fish for the scientific or other purposes stated in the licence; and
 - (b) taking the fish is not authorised by the licence.

Maximum penalty: 10 penalty units.

- (2) Subsection (1) does not apply if—
- (a) the licence holder unintentionally takes the fish; and
 - (b) except for taking the fish, the licence holder's conduct does not contravene this Act; and
 - (c) the licence holder immediately returns the fish to the waters from which it was taken with the least possible injury.
- (3) An offence against this section is a strict liability offence.

76 Importing or exporting live fish without authority

- (1) A person commits an offence if—
- (a) the person imports a live fish into, or exports a live fish from, the ACT; and
 - (b) the person does not—
 - (i) hold an import and export licence authorising the import or export ; or
 - (ii) have the conservator's written approval for the import or export.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if—
- (a) the person is the holder of an import and export licence; and
 - (b) the person imports a live fish into, or exports a live fish from, the ACT; and
 - (c) the import or export is not authorised by the licence.
- Maximum penalty: 100 penalty units.
- (3) This section does not apply to fish bought from a registered fish dealer for human consumption.
- (4) An offence against subsection (2) is a strict liability offence.

76A Trafficking in commercial quantity of fish of priority species

- (1) A person commits an offence if—
- (a) the person traffics in a commercial quantity of fish of a priority species; and
 - (b) the person does not hold a priority species licence authorising the trafficking.
- Maximum penalty: 1000 penalty units, imprisonment for 10 years or both.
- (2) This section does not apply if the person receives or processes the fish for personal or domestic consumption.
- (3) In this section:
- traffic* in fish includes—
- (a) sell fish; and
 - (b) possess or gain possession or control of fish with the intention of selling any of it; and
 - (c) receive fish; and
 - (d) process fish.

76B Taking commercial quantity of fish of priority species

- (1) A person commits an offence if—
- (a) the person takes a commercial quantity of fish of a priority species in a 24-hour period; and
 - (b) the person does not hold a priority species licence authorising the taking.

Maximum penalty: 1000 penalty units, imprisonment for 10 years or both.

- (2) This section does not apply if the person takes the fish for personal or domestic consumption.
- (3) In this section:
take means gain possession or control by any means.

76C Possessing commercial quantity of fish of a priority species

- (1) A person commits an offence if—
- (a) the person possesses a commercial quantity of fish of a priority species; and
 - (b) the person does not hold a priority species licence authorising the possession.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (2) This section does not apply if the person possesses the fish for personal or domestic consumption.

77 Possessing fish obtained illegally

A person commits an offence if—

- (a) the person possesses a fish; and
- (b) the fish was—
 - (i) imported into the ACT in contravention of section 76; or
 - (ii) taken in contravention of a law of the Commonwealth, a State or another Territory.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

78 Noxious fish

A person commits an offence if—

- (a) the person possesses a noxious fish; and
- (b) the person does not have the conservator's written approval to possess the fish.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

79 Release of fish

(1) A person commits an offence if—

- (a) the person releases a live fish into public waters; and
- (b) the person does not have the conservator's written approval to release the fish.

(2) This section does not apply to the release if the fish was taken from the part of the public waters into which it is released.

Maximum penalty: 10 penalty units.

(3) An offence against this section is a strict liability offence.

Division 8.2 General offences

80 Fishing closure offences

- (1) A person commits an offence if the person takes fish in contravention of a fishing closure.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not apply if—
- (a) the person unintentionally takes the fish; and
 - (b) except for taking the fish, the person's conduct does not contravene this Act; and
 - (c) the person immediately returns the fish to the waters from which it was taken with the least possible injury.
- (3) A person commits an offence if—
- (a) the person possesses fish; and
 - (b) the fish was taken in contravention of a fishing closure.

Maximum penalty: 50 penalty units.

- (4) An offence against this section is a strict liability offence.

81 Prohibited size and weight offences

- (1) A person commits an offence if—
- (a) the person takes a fish from public waters; and
 - (b) the fish is of size or weight that is prohibited under a declaration under section 15 (Declaration of fish of prohibited size and weight).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) does not apply if—
- (a) except for taking the fish, the person's conduct does not contravene this Act; and
 - (b) the person immediately returns the fish to the waters from which it was taken with the least possible injury.
- (3) A person commits an offence if the person possesses a fish that—
- (a) was taken from public waters; and
 - (b) is of size or weight that is prohibited under a declaration under section 15.
- Maximum penalty: 30 penalty units.
- (4) An offence against subsection (3) is a strict liability offence.

82 Quantity of fish offences

- (1) This section applies to a species of fish if a declaration under section 16 (Declaration of fish quantity) is in force in relation to the species.
- (2) A person commits an offence if the person takes, in a day, more fish of the species than the quantity allowed under the declaration.
- Maximum penalty: 30 penalty units.
- (3) An offence against this section is a strict liability offence.

83 Beheading or filleting fish

- (1) A person must not behead or fillet a fish in or beside public waters.
- Maximum penalty: 10 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant beheaded or filleted the fish for immediate consumption.

84 Use of live fin fish as bait etc

- (1) A person must not—
- (a) use live fin fish as bait; or
 - (b) be in or beside public waters in possession of live fin fish for use as bait.

Maximum penalty: 30 penalty units.

- (2) An offence against this section is a strict liability offence.

Division 8.3 Offences in relation to fishing gear

85 Use of fishing gear generally

- (1) A person commits an offence if—
- (a) the person uses fishing gear to take fish from public waters; and
 - (b) any of the following applies:
 - (i) the person is not within 10m of the gear;
 - (ii) the person cannot see the gear at all times;
 - (iii) the person is not permitted to take fish under this Act from waters using the fishing gear.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

86 Non-permitted fishing gear

- (1) A person commits an offence if—
- (a) the person uses fishing gear in or beside public waters; and
 - (b) the use of the fishing gear is not permitted by a declaration under section 17 (Declaration of fishing gear).

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the person is in or beside any public waters in possession of fishing gear; and
 - (b) the use of the fishing gear is not permitted by a declaration under section 17.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.

87 Use and possession of commercial fishing gear

- (1) A person commits an offence if—
- (a) the person is not the holder of a commercial fishing licence; and
 - (b) the person uses commercial fishing gear in or beside public waters.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the person is not the holder of a commercial fishing licence; and
 - (b) the person is in possession of commercial fishing gear in or beside public waters.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) For this section, a person is taken to *use* or *be in possession* of commercial fishing gear if, but only if, the person uses or is in possession of—
 - (a) a number of lines more than the number determined by the Minister in writing; or
 - (b) a number of nets more than the number determined by the Minister in writing; or
 - (c) a net larger than the size determined by the Minister in writing; or
 - (d) other equipment determined by the Minister in writing.
- (5) A determination under subsection (4) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Division 8.4 Protection of aquatic habitats

88 Spawning areas

A person commits an offence if—

- (a) the person does something that disturbs or damages spawn or spawning fish in public waters; and
- (b) the person is not authorised by a scientific licence to do the thing; and
- (c) the person does not have the conservator's written approval to do the thing.

Maximum penalty: 30 penalty units.

Part 10 Notification and review of decisions

107 Meaning of *reviewable decision*—pt 10

In this part:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

108 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

108A Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

Part 11 Miscellaneous

109 Delegation

The conservator may delegate the conservator's functions under this Act to a conservation officer.

Note For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

110 Acts and omissions of representatives

(1) In this section:

person means an individual.

Note See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

representative, of a person, means an employee or agent of the person.

state of mind, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(2) This section applies to a prosecution for any offence against this Act.

(3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—

- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and

- (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

111 Criminal liability of officers of corporation

- (1) If a corporation commits an offence against this Act, an executive officer of the corporation—
 - (a) commits the offence; and
 - (b) is liable, on conviction, to a penalty not exceeding the maximum penalty that may be imposed for the commission of the offence by an individual.
- (2) It is a defence to a prosecution for an offence against subsection (1) that—
 - (a) the defendant exercised due diligence to prevent the corporation from doing the act or making the omission alleged to constitute the offence or an element of the offence committed by the corporation; or
 - (b) an officer or employee of the corporation occupying the defendant's position could not reasonably have been expected to know of the contravention; or

- (c) the corporation would not have been found guilty of the offence because of its being able to establish a defence available to it under this Act.
- (3) An executive officer may, under subsection (1), be prosecuted for and convicted of an offence whether or not the corporation has been prosecuted for or convicted of the offence.

112 Production of licences

- (1) If a conservation officer asks a licensee to produce his or her licence for inspection at the conservator's office, the licensee must comply with the request within 2 working days after the day the licensee is asked.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.

113 Guidelines

- (1) The Minister may, in writing, issue guidelines about the exercise of the conservator's functions under the following sections:
 - (a) section 26 (Issue of commercial fishing licences—relevant considerations);
 - (b) section 27 (Issue of scientific licences—relevant considerations);
 - (c) section 28 (Import and export licences—relevant considerations);
 - (d) section 28A (Issue of priority species licences—relevant considerations);
 - (e) section 30 (Licence conditions and exemptions);
 - (f) section 31 (Licence changes);
 - (g) section 39 (Decision on application).

(2) The conservator must comply with guidelines issued under this section.

(3) A guideline under this section is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

114 Determination of fees

(1) The Minister may, in writing, determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

(2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

115 Approved forms

(1) The conservator may, in writing, approve forms for this Act.

Note For other provisions about forms, see Legislation Act, s 255.

(2) If the conservator approves a form for a particular purpose, the approved form must be used for that purpose.

(3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

116 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) The regulations may make provision in relation to—
- (a) the sale, transport, storage, processing and handling of fish; and
 - (b) the keeping of records for activities mentioned in paragraph (a); and
 - (c) the prevention of damage to a place where fish spawn or are likely to spawn.
- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

Schedule 1 Reviewable decisions

(see pt 10)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	25	refuse to issue licence	applicant for licence
2	30	issue licence with conditions	applicant for licence
3	31	change licence	licensee
4	34	cancel licence	entity that has licence cancelled
5	39	refuse to register fish dealer	applicant for registration
6	41	suspend fish dealer's registration	entity that has registration suspended
7	42	cancel fish dealer's registration	entity that has registration cancelled
8	68 (6)	retain seized thing	entity from whom thing seized

Dictionary

(see s 4)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- conservator of flora and fauna
- contravene
- disallowable instrument
- document
- function
- magistrate
- Magistrates Court
- penalty unit (see s 133)
- power
- reviewable decision notice.

abalone means blacklip and greenlip abalone and includes all other species of abalone.

aquaculture means—

- (a) cultivating fish or marine vegetation for harvesting the fish or vegetation or their progeny for sale; or
- (b) keeping fish or marine vegetation in a confined area for a commercial purpose;

but does not include—

- (c) keeping anything in a pet shop for sale or in an aquarium for exhibition (including an aquarium operated commercially); or
- (d) anything done in maintaining a collection of fish or marine vegetation that is not used for a commercial purpose; or
- (e) an activity prescribed by the regulations.

boat means any kind of vessel, however navigated.

commercial fishing licence means a licence mentioned in section 20.

commercial quantity of fish of a priority species means the quantity prescribed by regulation as a commercial quantity of the fish.

conservation officer means a conservation officer under the *Nature Conservation Act 1980*.

conservator means the conservator of flora and fauna.

corresponding law means a law of a State that regulates fisheries.

environment—see the *Environment Protection Act 1997*, dictionary.

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

fin fish means a marine, estuarine or freshwater fish of the class pisces.

fish means marine, estuarine or freshwater fish or other aquatic animal life, or any of their parts, at any stage of their history (whether alive or dead), and includes—

- (a) abalone, oysters and other aquatic molluscs; and
- (b) crustaceans; and
- (c) echinoderms; and
- (d) beachworms and other aquatic polychaetes;

but does not include—

- (e) reptiles; and
- (f) birds; and
- (g) amphibians.

fish dealer means a person who receives fish, for resale or other commercial use, from a person whom he or she knows or suspects or ought to know or suspect to be a commercial fisher, but does not include a person who receives fish only for the purpose of transporting them on behalf of the owner of the fish.

fishing closure—see section 13.

fishing gear means equipment, other than a vehicle or boat, used for taking fish.

fish of a priority species means—

- (a) abalone; and
- (b) rock lobster; and
- (c) fish of any other species prescribed by regulation as a priority species.

import and export licence means a licence mentioned in section 22.

licence means any of the following licences issued under section 25:

- (a) a commercial fishing licence;
- (b) a scientific licence;
- (c) an import and export licence;
- (d) a priority species licence.

licensee means the holder of a licence.

net includes anything attached to a net.

newspaper means a newspaper published and circulating daily in the ACT.

noxious fish means a species of fish declared to be noxious under section 14.

occupier, of a place, for division 7.1 (Powers for places)—see section 53.

possession includes having a thing in the custody of someone else.

priority species licence means a licence mentioned in section 22A.

private waters means—

- (a) waters of a dam, water storage or other water control structure that is not situated on a waterway; and
- (b) waters used for aquaculture.

processing means break up, can, chill, cook, cut up, freeze, pack, preserve, purge, shell, shuck, skin or otherwise treat or process fish.

public waters means all waters other than private waters.

receive fish, means receive fish from someone else, whether by purchase or otherwise, for any purpose other than—

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

register means the register kept under section 35.

registered means registered under this Act.

reviewable decision, for part 10 (Notification and review of decisions)—see section 107.

rock lobster means an animal of the genus *Jasus*.

scientific licence means a licence mentioned in section 21.

sell includes—

- (a) sell by wholesale, retail, auction or tender; and
- (b) barter or exchange; and
- (c) supply for profit; and
- (d) offer for sale, receive for sale or expose for sale; and
- (e) consign or deliver for sale; and

- (f) have in possession for sale; and
- (g) cause or allow anything mentioned in paragraphs (a) to (f) to be done.

species, of fish, includes a subspecies, domesticated forms or hybrids of a species.

take means to gather, catch, kill or remove fish from an aquatic habitat.

vehicle—see the *Road Transport (General) Act 1999*, dictionary.

waters means public waters and private waters.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Fisheries Act 2000 A2000-38

notified 20 July 2000 (Gaz 2000 No 29)
s 1, s 2 commenced 20 July 2000 (IA s 10B)
remainder commenced 13 September 2000 (Gaz 2000 No 35)

as amended by

Legislation (Consequential Amendments) Act 2001 A2001-44 pt 155

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 155 commenced 12 September 2001 (s 2 and see Gaz 2001
No S65)

Legislation Amendment Act 2002 A2002-11 pt 2.22

notified LR 27 May 2002
s 1, s 2 commenced 27 May 2002 (LA s 75)
pt 2.22 commenced 28 May 2002 (s 2 (1))

Statute Law Amendment Act 2002 A2002-30 pt 3.29

notified LR 16 September 2002
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))
pt 3.29 commenced 17 September 2002 (s 2 (1))

Statute Law Amendment Act 2003 A2003-41 sch 3 pt 3.12

notified LR 11 September 2003
s 1, s 2 commenced 11 September 2003 (LA s 75 (1))
amdt 3.266, amdt 3.269 commenced 10 December 2003 (s 2 (3))
sch 3 pt 3.12 remainder commenced 9 October 2003 (s 2 (1))

Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 1 pt 1.16, sch 2 pt 2.37

notified LR 26 March 2004
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))
sch 1 pt 1.16, sch 2 pt 2.37 commenced 9 April 2004 (s 2 (1))

Criminal Code Harmonisation Act 2005 A2005-54 sch 1 pt 1.21

notified LR 27 October 2005
s 1, s 2 commenced 27 October 2005 (LA s 75 (1))
sch 1 pt 1.21 commenced 24 November 2005 (s 2)

Fisheries Amendment Act 2006 A2006-48

notified LR 28 November 2006

s 1, s 2 commenced 28 November 2006 (LA s 75 (1))

remainder commenced 29 November 2006 (s 2)

Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.46

notified LR 22 March 2007

s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))

sch 3 pt 3.46 commenced 12 April 2007 (s 2 (1))

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2) A2008-37 sch 1 pt 1.43

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.43 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

4 Amendment history**Commencement**

s 2 om R1 LRA

Objects

s 3 am A2007-3 amdt 3.244

Notes

s 4A ins A2005-54 amdt 1.143

Offences against Act—application of Criminal Code etc

s 4B ins A2005-54 amdt 1.143

Preparation of fisheries management plan

s 6 sub A2001-44 amdt 1.1746

Consultation on draft plan

s 7 sub A2001-44 amdt 1.1746

am A2003-41 amdt 3.260

Consideration of suggestions etc and revision of draft plan

s 8 sub A2001-44 amdt 1.1746

Formal changes to draft plan

s 8A ins A2001-44 amdt 1.1746

Submission of draft plan to Minister

s 9 am A2001-44 amdt 1.1747

Endnotes

4 Amendment history

Fisheries management plan disallowable instrument etc
s 12 am A2001-44 amdt 1.1748, amdt 1.1749

Fishing closures and declarations
pt 3 hdg sub A2001-44 amdt 1.1750

Fishing closures
s 13 am A2001-44 amdt 1.1751, amdt 1.1752

Declaration of noxious fish
s 14 am A2001-44 amdt 1.1753, amdt 1.1754

Declaration of fish of a prohibited size or weight
s 15 am A2001-44 amdt 1.1755, amdt 1.1756

Declaration of fish quantity
s 16 am A2001-44 amdt 1.1757, amdt 1.1758

Declaration of fishing gear
s 17 am A2001-44 amdt 1.1759, amdt 1.1760

Disallowable instruments
s 18 om A2001-44 amdt 1.1761

Kinds of licences
s 19 am A2006-48 s 4

Priority species licences
s 22A ins A2006-48 s 5

Applications for licences
s 23 sub A2001-44 amdt 1.1762
am A2003-41 amdt 3.261

Additional information may be required
s 24 am A2003-41 amdt 3.262

Issue of commercial fishing licences—relevant considerations
s 26 am A2002-30 amdt 3.373

Import and export licences—relevant considerations
s 28 am A2002-30 amdt 3.373; A2006-48 s 6

Issue of priority species licences—relevant considerations
s 28A ins A2006-48 s 7

Terms of licences
s 29 am A2006-48 s 8

Licence changes
s 31 am A2003-41 amdt 3.262

Surrender of licences
s 33 am A2003-41 amdt 3.262

Cancellation of licences

s 34 am A2002-30 amdt 3.373; A2003-41 amdt 3.262

Fish dealers to be registered

s 37 sub A2005-54 amdt 1.144

Applications for registration

s 38 sub A2001-44 amdt 1.1763
am A2003-41 amdt 3.263

Suspension of registration

s 41 am A2003-41 amdt 3.264

Sale of fish by commercial fishers

s 45 sub A2005-54 amdt 1.145

Commercial fishers, priority species licence holders and fish dealers to make records

s 46 hdg sub A2006-48 s 9
s 46 am A2001-44 amdt 1.1764, amdt 1.1765
sub A2005-54 amdt 1.146
am A2006-48 ss 10-12; ss renum R10 LA

Keeping of records by commercial fishers, priority species licence holders and fish dealers

s 47 hdg sub A2006-48 s 13
s 47 sub A2005-54 amdt 1.146
am A2006-48 s 14; ss renum R10 LA

Production of records to conservation officers

s 48 sub A2005-54 amdt 1.146

Commercial fishers, priority species licence holders and fish dealers to supply information

s 49 hdg sub A2006-48 s 15
s 49 am A2003-41 amdt 3.264; A2005-54 amdt 1.147; A2006-48
ss 16-18; ss renum R10 LA

False records etc

s 50 om A2004-15 amdt 2.85

Copying and keeping records etc

s 52 am A2001-44 amdt 1.1766, amdt 1.1767

Conservation officer's powers

pt 7 note ins A2002-11 amdt 2.44

Powers on entry for routine inspection of business premises

s 60 am A2003-41 amdt 3.265

Powers on entry under a warrant

s 61 am A2003-41 amdt 3.265; A2005-54 amdt 1.148

Endnotes

4 Amendment history

Power to require name and address

s 64 sub A2005-54 amdt 1.149

Power to require gear to be removed from water

s 65 am A2005-54 amdt 1.150; ss renum A2005-54 amdt 1.151

Obstruction of investigation

s 70 om A2004-15 amdt 2.85

False or misleading information

s 71 om A2004-15 amdt 2.85

False or misleading or incomplete documents

s 72 om A2004-15 amdt 2.85

Legal professional privilege

s 73 om A2002-11 amdt 2.45

Offences

pt 8 hdg sub A2005-54 amdt 1.152

Unauthorised activities

div 8.1 hdg sub A2005-54 amdt 1.152

Taking fish for sale without licence etc

s 74 sub A2005-54 amdt 1.152

Taking fish contrary to scientific licence

s 75 sub A2005-54 amdt 1.152

Importing or exporting live fish without authority

s 76 sub A2005-54 amdt 1.152

Trafficking in commercial quantity of fish of priority species

s 76A ins A2006-48 s 19

Taking commercial quantity of fish of priority species

s 76B ins A2006-48 s 19

Possessing commercial quantity of fish of a priority species

s 76C ins A2006-48 s 19

Possessing fish obtained illegally

s 77 sub A2005-54 amdt 1.152

Noxious fish

s 78 sub A2005-54 amdt 1.152

Release of fish

s 79 sub A2005-54 amdt 1.152

General offences

div 8.2 hdg sub A2005-54 amdt 1.152

Fishing closure offences

s 80 sub A2005-54 amdt 1.152

Prohibited size and weight offences

s 81 sub A2005-54 amdt 1.152

Quantity of fish offences

s 82 sub A2005-54 amdt 1.152

Beheading or filleting fish

s 83 sub A2005-54 amdt 1.152

Use of live fin fish as bait etc

s 84 sub A2005-54 amdt 1.152

Offences in relation to fishing gear

div 8.3 hdg sub A2005-54 amdt 1.152

Use of fishing gear generally

s 85 sub A2005-54 amdt 1.152

Non-permitted fishing gear

s 86 sub A2005-54 amdt 1.152

Use and possession of commercial fishing gear

s 87 sub A2005-54 amdt 1.152

Protection of aquatic habitats

div 8.4 hdg sub A2005-54 amdt 1.152

Spawning areas

s 88 am A2001-44 amdt 1.1768, amdt 1.1769
sub A2005-54 amdt 1.152

Spawning areas

s 89 am A2001-44 amdt 1.1768, amdt 1.1769
om A2005-54 amdt 1.152

Infringement notices for certain offences

pt 9 hdg om A2003-41 amdt 3.266

Interpretation

div 9.1 hdg om A2003-41 amdt 3.266

Definitions for pt 9

s 90 om A2003-41 amdt 3.266

Infringement and reminder notices

div 9.2 hdg om A2003-41 amdt 3.266

Purpose and effect of div 9.2

s 91 om A2003-41 amdt 3.266

Endnotes

4 Amendment history

Service of infringement notices

s 92 om A2003-41 amdt 3.266

Contents of infringement notices

s 93 om A2003-41 amdt 3.266

Additional information in infringement notices

s 94 om A2003-41 amdt 3.266

Time for payment of infringement notice penalty

s 95 om A2003-41 amdt 3.266

Extension of time to pay penalty

s 96 om A2003-41 amdt 3.266

Effect of payment of infringement notice penalty

s 97 om A2003-41 amdt 3.266

Application for withdrawal of infringement notice

s 98 om A2003-41 amdt 3.266

Withdrawal of infringement notice

s 99 om A2003-41 amdt 3.266

Reminder notices

s 100 om A2003-41 amdt 3.266

Contents of reminder notices

s 101 om A2003-41 amdt 3.266

Additional information in reminder notices

s 102 om A2003-41 amdt 3.266

Disputing liability

div 9.3 hdg om A2003-41 amdt 3.266

Disputing liability for an infringement notice offence

s 103 om A2003-41 amdt 3.266

Extension of time to dispute liability

s 104 om A2003-41 amdt 3.266

Procedure if liability disputed

s 105 om A2003-41 amdt 3.266

Miscellaneous

div 9.4 hdg om A2003-41 amdt 3.266

Evidentiary certificates

s 106 om A2003-41 amdt 3.266

Notification and review of decisions

pt 10 hdg sub A2008-37 amdt 1.180

Meaning of *reviewable decision*—pt 10

s 107 sub A2008-37 amdt 1.180

Reviewable decision notices

s 108 sub A2008-37 amdt 1.180

Applications for review

s 108A ins A2008-37 amdt 1.180

Delegation

s 109 sub A2003-41 amdt 3.267

Acts and omissions of representatives

s 110 sub A2004-15 amdt 1.18

Production of licences

s 112 sub A2005-54 amdt 1.153

Guideliness 113 sub A2001-44 amdt 1.1770
am A2006-48 s 20; pars renum R10 LA**Determination of fees**

s 114 sub A2001-44 amdt 1.1770

Approved formss 115 am A2001-44 amdt 1.1771, amdt 1.1772; A2003-41
amdt 3.268**Regulation-making power**

s 116 sub A2001-44 amdt 1.1773

Regulations prescribing infringement notice penalties

s 117 om A2003-41 amdt 3.269

Repeal

s 118 om R1 LRA

Meaning of commencement day for pt 12

s 119 exp 31 December 2001 (s 120 (3))

Transitional provisions and consequential amendments

pt 12 hdg om R3 LA

Permits to take fish for scientific purposes

s 120 exp 31 December 2001 (s 120 (3))

Amendments of Nature Conservation Act

s 121 om R1 LRA

Amendments of the Nature Conservation Act 1980

sch om R1 LRA

Endnotes

4 Amendment history

Reviewable decisions

sch 1 ins A2008-37 amdt 1.181

Dictionary

dict am A2003-41 amdt 3.270; A2008-37 amdt 1.182, amdt 1.183
def **abalone** ins A2006-48 s 21
def **commercial fishing licence** ins A2003-41 amdt 3.271
def **commercial quantity** ins A2006-48 s 21
def **conservator** sub A2003-41 amdt 3.272
def **determined fee** om A2001-44 amdt 1.1774
def **environment** sub A2007-3 amdt 3.245
def **fish of a priority species** ins A2006-48 s 21
def **import and export licence** ins A2003-41 amdt 3.273
def **licence** sub A2003-41 amdt 3.274
am A2006-48 s 22
def **occupier** ins A2003-41 amdt 3.275
def **priority species licence** ins A2006-48 s 23
def **reviewable decision** ins A2008-37 amdt 1.184
def **rock lobster** ins A2006-48 s 23
def **scientific licence** ins A2003-41 amdt 3.276

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 30 Sept 2000	30 Sept 2000– 11 Sept 2001	not amended	new Act
R1 (RI) 26 May 2008	30 Sept 2000– 11 Sept 2001	not amended	reissue of printed version
R2 30 Nov 2001	12 Sept 2001– 30 Dec 2001	A2001-44	amendments by A2001-44
R3 10 Jan 2002	31 Dec 2001– 27 May 2002	A2001-44	commenced expiry
R4 30 May 2002	28 May 2002– 16 Sept 2002	A2002-11	amendments by A2002-11
R5 23 Sept 2002	17 Sept 2002– 8 Oct 2003	A2002-30	amendments by A2002-30
R6 9 Oct 2003	9 Oct 2003– 9 Dec 2003	<u>A2003-41</u>	amendments by A2003-41
R7 10 Dec 2003	10 Dec 2003– 8 Apr 2004	A2003-41	amendments by A2003-41
R8 9 Apr 2004	9 Apr 2004– 23 Nov 2005	A2004-15	amendments by A2004-15
R9 24 Nov 2005	24 Nov 2005– 28 Nov 2006	A2005-54	amendments by A2005-54
R10 29 Nov 2006	29 Nov 2006– 11 Apr 2007	A2006-48	amendments by A2006-48
R11 12 Apr 2007	12 Apr 2007– 1 Feb 2009	A2007-3	amendments by A2007-3

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