

FIRST PRINT

**FISHERIES AND OYSTER FARMS (MANAGEMENT PLANS)  
AMENDMENT BILL 1992**

NEW SOUTH WALES



**EXPLANATORY NOTE**

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Fisheries and Oyster Farms Act 1935 for the purpose of providing for the management of specified fisheries by means of management plans. Management plans will normally function through a system of statutory fishing rights, which will be recorded in a register of those rights. There will be a limited right of appeal to the District Court in respect of the allocation or refusal to allocate a statutory fishing right under a management plan. The Bill also makes amendments to the Fisheries and Oyster Farms Act 1935 of a consequential nature.

---

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be fixed by proclamation.

Clause 3 is a formal provision that gives effect to Schedule 1. Schedule 1 contains amendments to the Fisheries and Oyster Farms Act 1935 relating to management plans.

Clause 4 is a savings provision for existing orders in force under section 22A of that Act (Restricted fishery).

**SCHEDULE 1—AMENDMENTS**

Schedule 1 (1) inserts into section 4 of the Act (Definitions) definitions of "Approved", "Eligible person", "Fishery", "Fishing", "Managed fishery", "Management plan", "Prescribed waters", "Register", "Registrar" and "Statutory fishing right".

Schedule 1 (2) amends section 18 of the Act (Closing of waters). The amendment makes it clear that the section will apply to a managed fishery (i.e. a fishery for which a management plan is in force) but only if the Minister is satisfied that an emergency has occurred which is endangering or is likely to endanger stocks of fish, or a species or description of fish, in the fishery.

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*

---

Schedule 1 (3) amends section 21 of the Act (Taking of certain fish illegal during prescribed periods). The amendment is consequential on the amendments contained in Schedule 1 (6).

Schedule 1 (4) amends section 22A of the Act (Restricted fishery). The amendment extends the powers of the Minister to make orders under the section by enabling the Minister to make an order declaring the use of a specified method for taking fish, or fish of a specified class, to be a restricted fishery.

Schedule 1 (5) amends section 24C of the Act (Fishermen to be licensed). The amendment is also consequential on the amendments being made by Schedule 1 (6) and provides that a fisherman's licence does not authorise the licensee to fish in a managed fishery unless the licence is endorsed with a statement to the effect that the licensee is also the holder of a statutory fishing right with respect to the fishery.

Schedule 1 (6) amends Part 3 of the Act (Fishing generally) by inserting into the Part proposed Divisions 5A and 5B. The Divisions contain the following provisions:

**Division 5A—Management of certain fisheries**

- Section 34A will empower the Governor-in-Council to make a regulation embodying a management plan for a fishery or for 2 or more fisheries. Section 5 of the Subordinate Legislation Act 1989 will apply to such a regulation. That section requires that, before a principal regulation may be made, the Minister must ensure that a regulatory impact statement is published with respect to the proposed regulation and that a notice is published stating the objects of the proposed regulation, telling people where copies of the regulatory impact statement and the proposed regulation can be obtained or inspected and inviting people to make comments and submissions on the proposed regulation. It also requires the Minister to ensure that consultation takes place with relevant interest groups and that comments and submissions on the proposed regulation are appropriately considered. Other subordinate legislation under the Act will apply to a managed fishery only to the extent that it is not inconsistent with the management plan set out in the regulation or if it states that it applies despite subsection (4) of the proposed section. The section will also enable regulations to be made for the purposes of Divisions 5A and 5B of Part 3 of the Act providing for the enforcement of management plans, providing for the imposition and recovery of certain fees and requiring holders of statutory fishing rights to record information or lodge returns as to their activities.
- Section 34B will require a management plan to set out objectives to be achieved and the means by which these are to be attained. A management plan for a fishery may determine the manner in which fishing capacity is to be measured and how much capacity is to be permitted in the fishery. Such a plan may also make provision for a system of statutory fishing rights and for the allocation of those rights.
- Section 34C will require the Minister to establish a management advisory committee for a managed fishery.
- Section 34D specifies the functions of a management advisory committee established for a managed fishery. Among those functions are advising the Minister as to the proper management of the fishery and liaising between the Minister and persons engaged in fishing in the fishery.

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*

---

- Section 34E provides for the amendment or repeal of a regulation that embodies a management plan.

**Division 5B—Statutory fishing rights**

- Section 34F identifies the forms a statutory fishing right may take in a managed fishery. This may be for a fixed quantity or fixed proportion of an allowable catch, the right to fish at specified times or during specified periods or to fish at times or during periods other than specified times or periods, the right to use a boat in the fishery or the right to use specified fishing equipment, a specified quantity of fishing equipment, a specific type of boat or a specified size of boat. It will also be possible for a statutory fishing right to take any other form as specified in a management plan.
- Section 34G provides that, if a management plan provides for a managed fishery to be managed by means of a system of statutory fishing rights, the Minister will be required to establish and administer such a system in accordance with the plan. It will also require the Minister, in a case where the holder of a fisherman's licence is granted a statutory fishing right, to endorse the licence with a statement to the effect that the person is the holder of the right. In any other case, the Minister will be required to give a person to whom a statutory fishing right is granted under such a plan a certificate evidencing the grant of that right. A statutory fishing right is to be subject to conditions indicated in the endorsement or certificate. A statutory fishing right will cease if the regulation embodying the management plan is repealed or expires. Such a right may be cancelled under proposed section 34R. No compensation will be payable if a statutory fishing right ceases to have effect or is cancelled. The Minister will be empowered to change the conditions that apply to a statutory fishing right at the request of the holder or on the Minister's own initiative. The holder of a statutory fishing right will be able to surrender that right by giving written notice to the Minister.
- Section 34H will require the Minister, by public notice, to declare that he or she proposes to allocate statutory fishing rights with respect to a specified managed fishery.
- Section 34I will require the Minister to include in a notice under proposed section 34H a description of the fishing activities to be permitted and to indicate the way in which the allocation will be made, including the procedures as identified in the management plan to be followed in selecting the holders of the fishing rights concerned. The notice will also have to state the conditions to be satisfied before a person will be registered as eligible for the allocation of a statutory fishing right and the fee payable by a person seeking registration. The period for which a statutory fishing right will be granted will also have to be indicated. If the grant is to be made otherwise than by auction or tender, the amount that will be payable by a successful applicant will also have to be stated. The notice will also be required to indicate whether any charge imposed is to be paid as a lump sum or in instalments and to indicate any other matter with respect to the grant that it is appropriate for potential applicants to know.
- Section 34J will require the Minister to register a person as an eligible person for the allocation of a statutory fishing right any person who satisfies the conditions specified in the management plan, has paid the prescribed fee and, in the case of an allocation by public tender, has complied with the appropriate provisions of

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*

---

proposed section 34K. The Minister will be required to notify successful and unsuccessful applicants as soon as possible and to advise the applicants of the rights of appeal open to them.

- Section 34K sets out the provisions that will apply to statutory fishing rights allocated by public tender, including registration as persons eligible to participate in the tender process, the lodging of tenders and the handling of tender documents to ensure that confidentiality is maintained.
- Section 34L provides for the procedures to be followed in selecting persons to whom statutory fishing rights are to be allocated. When fishing rights are to be allocated on the basis of existing usage, the relevant regulations will be required to include the procedure to be followed for ensuring the equitable selection of persons from among the persons registered under proposed section 34J as eligible persons for the allocation of the rights. When fishing rights are to be allocated by auction, the relevant regulations will be required to include the procedures to be followed for holding another auction when the person successful at auction fails to complete the transaction. When fishing rights are to be allocated by public tender, the relevant regulations will have to specify the procedure to be followed in opening the tenders, recording the amounts tendered and ranking the tenderers by reference to the amounts tendered. When fishing rights are to be allocated by ballot, ranking of the participants is to be in accordance with the order of precedence determined by the ballot.
- Section 34M will require that, when statutory fishing rights are allocated through auction, the allocation is to be to the person making the highest bid. If allocation is to be by public tender or ballot, the allocation will be required to be in accordance with the precedence list. If allocation of fishing rights is to be made by a means other than existing usage, auction, tender or ballot, the allocation will have to be in accordance with the procedures specified in the relevant management plan. The Minister will have to notify the outcome to all persons registered as eligible for the allocation of a statutory fishing right, together with a statement of the reasons for making the allocation and advice as to any rights of appeal.
- Section 34N provides that, when the Minister makes a decision relating to the initial allocation of a statutory fishing right under a management plan, the decision can be implemented immediately but will remain provisional pending the outcome of any appeal against the decision to the District Court under section 119 of the Act (as proposed to be substituted by Schedule 1 (7)).
- Section 34O provides that, unless the person allocated a statutory fishing right at an auction immediately pays the requisite amount, the right will cease to be available to that person. An allocation on the basis of existing usage or by public tender or ballot will be revoked unless the successful applicant pays any money payable for the right within 30 days of the allocation. If the money is not paid, the right will become available for allocation to the next highest ranked person on the relevant precedence list.
- Section 34P provides that the Minister will be required, when the required pre-conditions have been satisfied, to grant a statutory fishing right to a person to whom the right has been allocated.
- Section 34Q will enable the Minister, by written notice to the holder of a statutory fishing right, to suspend the right if money due for the right is not paid within the period prescribed, or if the Minister believes that conditions attaching

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*

---

to the right have not been complied with, or that the holder has given deliberately false or misleading information in an application under the Act. Unless sooner revoked, a suspension, other than a suspension for non-payment of charges, will remain in force until legal proceedings relating to any alleged offence that gave rise to the suspension have been completed provided that those legal proceedings are begun within 28 days after the date of the suspension or, in any other case, for 28 days after that date. A statutory fishing right suspended for non-payment of charges will have to be restored if outstanding money is paid or if the holder enters into arrangements satisfactory to the Minister to pay the money owing. The Minister will be empowered to suspend a statutory fishing right for such period as he or she determines if the holder is convicted of an offence under the Act or under a fishing law of the Commonwealth, another country, another State or a Commonwealth Territory. The Minister will also be able to revoke such a suspension.

- Section 34R will empower the Minister to cancel a statutory fishing right if the holder is convicted under the Act, or a fisheries law of the Commonwealth, another country, another State or a Commonwealth Territory. The Minister will also be empowered to cancel a statutory fishing right if any money payable for the right is not paid within a specified period.
- Section 34S provides for the appointment of a Registrar of Statutory Fishing Rights. The Registrar will be an officer of NSW Fisheries.
- Section 34T will require the Registrar to keep a register of statutory fishing rights. The clause will allow the register to be kept wholly or partly by means of a computer.
- Section 34U specifies the details which the Registrar will be required to include in the register in respect of statutory fishing rights that the Minister has granted.
- Section 34V provides that a transaction purporting to create, assign, transfer, transmit or extinguish an interest in a statutory fishing right will not have effect until it is registered. The Registrar will be required to register such a transaction provided the specified procedures are followed.
- Section 34W will prohibit the recording of any kind of trust on the register.
- Section 34X will entitle the holder of a statutory fishing right to deal with the right as the absolute owner. However, the exercise of the entitlement will be subject to any condition to which that right is subject, to any rights recorded in the register as vested in another person and to obtaining any consent required under proposed section 34Y.
- Section 34Y will prevent the holder of a statutory fishing right from assigning, transferring, mortgaging or otherwise creating the right unless the Minister has consented in writing. The Minister will be able to refuse consent only if the proposed transaction is contrary to the relevant management plan.
- Section 34Z will require the Registrar to make an entry in the register of any suspension or cancellation of a statutory fishing right and the revocation of any such suspension.
- Section 34AA provides that the registration of a transaction in the register is not to give the document relating to the transaction an effect that it would not otherwise have had. In other words, the fact that the register states that a person is the holder of an interest in a statutory fishing right will not of itself confer on that person an indefeasible interest.

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*

---

- Section 34AB will entitle members of the public to inspect the register.
- Section 34AC provides that the register is to be evidence of its contents. A copy of the register or any entry in it, or of any document or part of a document forming part of the register, is to be admissible in evidence in legal proceedings if the copy purports to be signed by the Registrar.
- Section 34AD will require the Registrar to rectify the register if the District Court orders rectification.
- Section 34AE will confer on the Registrar a general power to correct any clerical error or obvious mistake in the register.
- Section 34AF provides that neither the Minister nor the Registrar nor any other officer of NSW Fisheries is to be liable to litigation as a result of his or her exercise in good faith of functions imposed or conferred by Division 5B.
- Section 34AG will make it an offence for a person to be involved with making false entries in the register or in presenting false documentation of any matter in the register. The clause will also make it an offence for the holder of a statutory fishing right to contravene a condition to which the right is subject or allow or cause any person acting on his or her behalf to contravene such a condition. It will also be an offence for a person acting on behalf of the holder of a statutory fishing right to contravene such a condition. A court which convicts a person of an offence under the section will be empowered to make an order prohibiting the person from being on a boat that is engaged in commercial fishing.

Schedule 1 (7) replaces section 119 of the Act with two new sections. The existing section 119 confers on persons who are refused a licence or the renewal of a licence under the Act, or whose licences are cancelled or suspended, a right of appeal to the District Court. The substituted section 119, in addition to conferring similar rights of appeal and a right of appeal against the imposition of a condition, will confer a right of appeal on a person whose application for a restricted fishery permit or the renewal of such a permit is refused, or whose permit is suspended or cancelled. It will also confer a right of appeal on a person whose application for registration as an eligible person under proposed section 34J is refused and on a person who is dissatisfied with a decision of the Minister with respect to the allocation of a statutory fishing right. The other new section, proposed section 119A, provides for the hearing and determination of such appeals by the District Court.

Schedule 1 (8) amends section 120 of the Act (Regulations). The amendment is consequential on proposed section 34B (4). (See Schedule 1 (6).)

Schedule 1 (9) inserts into the Act proposed Schedule F. The Schedule deals with matters of a machinery nature relating to the constitution and procedure of a management advisory committee established under proposed section 34C. Among the matters dealt with in the Schedule are terms of office of members, resignation and removal from office of members, the role of the chairperson, remuneration and allowances of members, the disclosure of pecuniary interests of members, quorums for meetings and voting.

---

FIRST PRINT

**FISHERIES AND OYSTER FARMS (MANAGEMENT PLANS)  
AMENDMENT BILL 1992**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Fisheries and Oyster Farms Act 1935 No. 58
4. Saving

**SCHEDULE 1—AMENDMENTS**

---





**FISHERIES AND OYSTER FARMS (MANAGEMENT PLANS)  
AMENDMENT BILL 1992**

NEW SOUTH WALES



No. , 1992

---

---

**A BILL FOR**

An Act to amend the Fisheries and Oyster Farms Act 1935 for the purpose of providing for management plans to be established and implemented in respect of certain fisheries; and for related purposes.

---

---

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Fisheries and Oyster Farms (Management Plans) Amendment Act 1992.

5 **Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Fisheries and Oyster Farms Act 1935 No. 58**

10 3. The Fisheries and Oyster Farms Act 1935 is amended as set out in Schedule 1.

**Saving**

15 4. An order in force under section 22A of the Fisheries and Oyster Farms Act 1935 immediately before the commencement of Schedule 1 (4) is taken to be an order made under that section, as in force after that commencement.

---

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 4 (**Definitions**):

In section 4 (1), insert in alphabetical order:

- 20       “**Approved**” means approved by the Minister.
- “**Eligible person**” means a person registered under section 34J as an eligible person for the allocation of a statutory fishing right.
- 25       “**Fishery**”, in Divisions 5A and 5B of Part 3, includes activities identified by reference to all or any of the following:
- (a) a species of fish;
- (b) a description of fish by reference to sex or any other characteristic;
- 30       (c) an area of waters or seabed;

Fisheries and Oyster Farms (Management Plans) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

- (d) a method of fishing;
  - (e) a class of boats;
  - (f) a class of persons;
  - (g) a purpose of activities. 5
- “Fishing”**, in Divisions 5A and 5B of Part 3, means:
- (a) searching for or taking fish; or
  - (b) attempting to search for or take fish; or
  - (c) engaging in any other activities that can reasonably be expected to result in fish being located or taken; or 10
  - (d) placing, searching for or recovering fish aggregating devices or associated electronic equipment (such as radio beacons); or
  - (e) any operations at sea directly supporting or preparatory to any activity described in this definition; or 15
  - (f) the use of aircraft in relation to any activity described in this definition, except flights in emergencies involving the health or safety of crew members or the safety of a boat; or 20
  - (g) the processing, carrying or transshipping of fish that have been taken.
- “Managed fishery”** means a fishery to which a management plan applies. 25
- “Management plan”** means a management plan embodied in a regulation made for the purposes of Division 5A of Part 3.
- “Prescribed waters”** has the meaning given by subsection (3). 30
- “Register”** means the register of statutory fishing rights kept in accordance with section 34T.
- “Registrar”** means the Registrar of Statutory Fishing Rights appointed under section 34S.
- “Statutory fishing right”** has the meaning given by section 34F. 35

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*

SCHEDULE 1—AMENDMENTS—*continued*

(2) Section 18 (**Closing of waters**):

After section 18 (7A), insert:

5 (8) The powers conferred on the Minister by this section extend to a managed fishery but only if the Minister certifies in the relevant notification that an emergency has arisen that is endangering or is likely to endanger stocks of fish, or stocks of fish of any specified species or description, that comprise or form part of, or are within, the fishery.

10 (9) A notification under this section that relates to a managed fishery may not remain in force for more than 90 days from the date on which it is made. However, if the Minister is satisfied that an emergency will or is likely to continue for longer than 90 days, the Minister may extend the period for one further period not exceeding 90 days by a further notification made before the expiry of the original notification.

15 (10) An emergency includes the pollution of the fishery, the infection of fish stocks with disease and the sudden depletion of fish stocks for any reason.

(3) Section 21 (**Taking of certain fish illegal during prescribed periods**):

After section 21 (5), insert:

25 (6) This section does not apply to a species or description of fish, or to waters, that comprise or form part of, or are within, a managed fishery.

(4) Section 22A (**Restricted fishery**):

(a) Omit section 22A (1) and (2), insert instead:

30 (1) The Minister may, by order published in the Gazette, declare to be a restricted fishery:

- (a) fish of a specified class; or
- (b) specified waters that are within prescribed waters; or
- (c) fish of a specified class within specified waters that are within prescribed waters; or
- 35 (d) the use of a specified method for taking fish of a specified class; or

Fisheries and Oyster Farms (Management Plans) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

- (e) the use of a specified method for taking fish, or fish of a specified class, from specified waters that are within prescribed waters.
- (2) If an order under subsection (1) is in force, a person who, for the purposes of sale, takes or attempts to take: 5
- (a) fish of a class that is the subject of the order; or
- (b) fish from specified waters that are the subject of the order; or
- (c) fish of a class that is the subject of the order from waters that are also the subject of the order; or 10
- (d) fish of a class that is the subject of the order by a method that is also the subject of the order; or
- (e) fish, or fish of a specified class, from waters that are the subject of the order by a method that is also the subject of the order, 15
- is guilty of an offence unless:
- (f) the person is authorised to take fish for sale by a licence issued under section 24C and a restricted fishery permit; and 20
- (g) in taking or attempting to take the fish, the person complies with the conditions subject to which the permit was issued.
- (b) In section 22A (3) (b), after “specified period”, insert “or by a specified method, or by a specified method during a specified period,”. 25
- (c) Omit section 22A (3) (b) (i) and (ii), insert instead:
- (i) where the restricted fishery comprises a specified class of fish or the use of a specified method for taking a specified class of fish—fish of that class; or 30
- (ii) where the restricted fishery comprises specified waters or fish of a specified class within specified waters that are within prescribed waters or the use of a specified method for taking fish, or fish of a specified class, from specified waters that are within prescribed waters—any fish, or any fish of that class, within those waters; or 35

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*

SCHEDULE 1—AMENDMENTS—*continued*

(5) Section 24C. (Fishermen to be licensed):

After section 24C (6), insert:

5 (7) If specified waters, or a species or description of fish, within prescribed waters comprise or form part of, or are within, a managed fishery, a licence issued under this section does not authorise the licensee:

- 10 (a) to take or land fish of that species or description for the purpose of sale; or
- (b) to take fish from those specified waters for the purpose of sale; or
- (c) to land fish taken from those specified waters for the purpose of sale,

15 unless the licence is endorsed with a statement by the licensing authority that the licensee is the holder of a relevant statutory fishing right for the fishery.

(6) Part 3, Divisions 5A and 5B:

After Division 5 of Part 3, insert:

**Division 5A—Management of certain fisheries**

20 **Management plans**

34A. (1) The Governor may make a regulation under section 120 embodying a management plan for a fishery or for 2 or more fisheries. Such a regulation must comply with section 34B.

25 (2) Section 5 of the Subordinate Legislation Act 1989 (**Regulatory impact statements**) applies to the making of a regulation under this section, but subsection (2) (a) (iv) of that section is to be read as if “28 days” were substituted for “21 days”. The notice referred to in subsection (2) (a) of that section must also specify the fishery to which the proposed regulation relates and state that it is proposed to give effect to the management plan embodied in that regulation.

30

(3) Nothing in subsection (2) limits the operation of the other provisions of the Subordinate Legislation Act 1989 to the making of a regulation under this section.

35

Fisheries and Oyster Farms (Management Plans) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

(4) Any other regulation or order made under this Act applies to a managed fishery only to the extent that it is not inconsistent with a regulation made under this section or if it expressly states that it applies to the fishery despite this subsection. 5

(5) The Governor may also make regulations under section 120:

(a) providing for effect to be given to management plans and prescribing measures for enforcing those plans; and 10

(b) providing for the imposition and recovery of fees for:

- the making of applications under Division 5B; and
- the lodging and registration of documents under that Division; and 15

- the issue of documents referred to in section 34AC; and
- the provision of signed copies of the register or entries in the register or of duplicate documents that are retained by the Registrar in accordance with section 34V; and 20

(c) requiring holders of statutory fishing rights to record, or lodge returns containing, information as to:

- the taking of fish under those rights and the sale or disposal of such fish; and 25
- the carrying and transshipping of fish taken in accordance with those rights; and
- the processing of fish taken under those rights and the sale or disposal of fish so processed. 30

**Note**

The effect of applying section 5 of the Subordinate Legislation Act 1989 (as modified by section 34A (2)) to the making of a regulation that embodies a management plan is that the Minister must ensure that:

- (a) a regulatory impact statement is prepared in accordance with that section; and 35

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*

---

SCHEDULE 1—AMENDMENTS—*continued*

- (b) a notice is published as required by that section:
- stating the objects of the proposed regulation; and
  - 5       • advising where a copy of the regulatory impact statement may be obtained or inspected; and
  - advising where a copy of the proposed regulation may be obtained or inspected; and
  - 10       • inviting comments and submissions on the proposed regulation to be made to the Minister within a specified time, but not less than 28 days from the publication of the notice; and
- (c) consultation takes place with appropriate representatives of persons engaged in fishing, consumers, the public, and relevant interest groups, likely to be affected by the proposed regulation; and
- 15       and
- (d) all comments and submissions on the proposed regulation are appropriately considered.
- What must and what can a regulation embodying a management plan contain?**
- 20       34B. (1) A regulation embodying a management plan for a fishery must set out:
- (a) the objectives of the plan; and
  - (b) measures by which the objectives are to be attained; and
  - 25       (c) performance criteria against which the measures taken may be assessed.
- (2) Such a regulation may also:
- (a) determine the manner in which the fishing capacity of the fishery is to be measured; and
  - 30       (b) determine the fishing capacity, measured in that manner, permitted for the fishery; and
  - (c) provide for the management of the fishery by means of a system of statutory fishing rights; and
  - 35       (d) contain a description of the fishery by reference to area, fish species, fishing methods to be employed or any other matter; and



Fisheries and Oyster Farms (Management Plans) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

- |   |  |
|---|--|
| <p>(e) subject to section 34M, formulate procedures to be followed for selecting persons to whom statutory fishing rights are to be allocated, including (but not limited to):</p> <ul style="list-style-type: none"> <li>• selection on the basis of existing usage of the fishery; or</li> <li>• holding an auction; or</li> <li>• calling public tenders; or</li> <li>• conducting a ballot; and</li> </ul> <p>(f) specify the kind and quantity of equipment that may be used in the fishery; and</p> <p>(g) impose obligations on the holders of statutory fishing rights; and</p> <p>(h) prohibit commercial fishing in the fishery at specified times or during specified periods; and</p> <p>(i) prohibit or regulate recreational fishing in the fishery; and</p> <p>(j) prohibit or regulate fishing for scientific research purposes in the fishery.</p> <p>(3) Such a regulation must:</p> <p>(a) if the relevant management plan makes provision for the management of the fishery by means of a system of statutory fishing rights—provide for registration of persons who are to be eligible to be allocated such rights and specify the conditions relevant to that registration; and</p> <p>(b) contain a statement of any right of appeal that a person has in relation to that registration or the allocation of, or refusal to allocate, a statutory fishing right.</p> <p>(4) Such a regulation may apply, adopt or incorporate, with or without modification:</p> <p>(a) a provision of any Act, or of any regulation, rule, by-law, order or proclamation made under an Act, as in force at a particular time or as in force from time to time; or</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
|---|--|

Fisheries and Oyster Farms (Management Plans) Amendment 1992SCHEDULE 1—AMENDMENTS—*continued*

- (b) any matter contained in any other document or writing as in force or existing at the time when the regulation takes effect.

5 **Minister must appoint management advisory committee for a managed fishery**

10 34C. (1) The Minister must establish a management advisory committee for a managed fishery as soon as practicable after a regulation embodying a management plan for the fishery is made.

(2) A management advisory committee is to consist of the following members:

- 15 (a) a chairperson appointed by the Minister;
- (b) the officer of NSW Fisheries responsible for the day to day management of the fishery;
- (c) such other persons (not exceeding 7) as the Minister thinks fit, after consultation with persons who, in the opinion of the Minister, have an interest in the proper management of the fishery.

20 (3) The Minister must ensure that, as far as possible, some of the members of a management advisory committee are persons engaged in, or with experience in, the fishing industry.

25 (4) The Minister must not abolish a management advisory committee while the relevant management plan continues to have effect.

(5) Schedule F has effect as to the members and procedure of a management advisory committee.

**Functions of a management advisory committee**

30 34D. (1) The functions of a management advisory committee established for a managed fishery are:

- (a) to advise the Minister as to the proper management of the fishery; and
- 35 (b) to liaise between the Minister and persons engaged in fishing in the fishery; and
- (c) to monitor, analyse and evaluate, and to report to the Minister on, any scientific, economic or other information relating to the fishery.

Fisheries and Oyster Farms (Management Plans) Amendment 1992SCHEDULE 1—AMENDMENTS—*continued*

(2) A management advisory committee has power to do all things necessary or convenient to be done in connection with the performance of its functions.

(3) A management advisory committee must act in accordance with any policies determined by, and any directions given by, the Minister, except in so far as those policies or directions are inconsistent with this Act or any other law applying in New South Wales. 5

**What must happen before a regulation embodying a management plan is amended or repealed? 10**

34E. (1) Before a regulation embodying a management plan is amended or repealed, the Minister must:

- (a) consult the management advisory committee established for the managed fishery concerned; and 15
- (b) give notice of the proposed amendment or repeal in a newspaper circulating throughout New South Wales and in such other newspaper or publication as appears to be appropriate in the circumstances; and
- (c) if the fishery is a commercial fishery—give written notice of the proposed amendment or repeal to each holder of a statutory fishing right granted in accordance with the plan; and 20
- (d) in the case of a proposed amendment—specify in the notice where copies of the regulation, as proposed to be amended, can be obtained or inspected. 25

(2) If a regulation embodying a management plan for a managed fishery is repealed or expires, all statutory fishing rights and other interests relating to the fishery cease to have effect with respect to the fishery. 30

(3) Subject to this section, section 34A applies to the process of amending or repealing a regulation made under that section in the same way as it applies to the process of making a regulation under that section. However, that section does not apply to an amendment to such a regulation if the Minister, by notice in the Gazette, certifies that the amendment: 35

- (a) is of a minor nature; or
- (b) is designed to correct a mistake.

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*

SCHEDULE 1—AMENDMENTS—*continued*

**Division 5B—Statutory fishing rights**

**What is a statutory fishing right?**

34F. For the purposes of this Act, a statutory fishing right is:

5

(a) a right to take a specified quantity of fish or fish of a specified species in, or a specified proportion of the total quantity of fish allowed to be taken from, a managed fishery; or

10

(b) a right to fish in a managed fishery at specified times or during specified periods or other than at specified times or during specified periods; or

(c) a right to use a boat in a managed fishery for a purpose specified in a management plan; or

15

(d) a right entitling a person to use in a managed fishery:

- specified fishing equipment; or

- a specified quantity or type of fishing equipment; or

- a specified type of boat; or

20

- a boat of a specified size; or

(e) any other right affecting fishing in a managed fishery.

**Minister to establish system of statutory fishing rights**

25

34G. (1) If a management plan provides for the management of a managed fishery by means of a system of statutory fishing rights, the Minister must establish and administer such a system in accordance with the plan.

(2) When a statutory fishing right is granted to a person who is the holder of a fisherman's licence, the Minister must ensure that the licence is produced to the Minister and that there is endorsed on the licence:

30

(a) a statement to the effect that the person is the holder of the right; and

(b) the conditions to which the right is subject.

Fisheries and Oyster Farms (Management Plans) Amendment 1992SCHEDULE 1—AMENDMENTS—*continued*

- (3) When a statutory fishing right is granted to a person who is not the holder of a fisherman's licence, the Minister must ensure that the person is issued a statutory fishing right certificate: 5
- (a) certifying that the person is the holder of the right; and
  - (b) specifying the conditions to which the right is subject.
- (4) A statutory fishing right is granted subject to the following conditions:
- (a) the holder of the right must comply with any obligations imposed on the holder by the relevant management plan; 10
  - (b) the right will cease to have effect if the regulations giving effect to the management plan for the managed fishery to which the right relates are repealed or expire; 15
  - (c) the right may, under a provision of this Act, cease to have effect or cease to apply to a managed fishery;
  - (d) the right may be cancelled under section 34R;
  - (e) no compensation is payable because the right is cancelled or because it otherwise ceases to have effect or ceases to apply to a managed fishery. 20
- (5) A statutory fishing right:
- (a) is subject to such other conditions as are specified in the endorsement of the right on the relevant fisherman's licence, or in the relevant statutory fishing right certificate, including conditions relating to the suspension or cancellation of the right and the transferability or otherwise of the right; and 25
  - (b) comes into force on the day specified for the purpose in the endorsement or certificate, or, if no day is so specified, on the day on which the endorsement is entered or the certificate is issued; and 30
  - (c) subject to this Act, remains in force:
    - until the day specified for the purpose in the endorsement or certificate; or 35
    - if no such day is specified, until it is cancelled or surrendered or it otherwise ceases to have effect under this Act.

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*

SCHEDULE 1—AMENDMENTS—*continued*

(6) The Minister may, by written notice given to the holder of a statutory fishing right, whether or not at the request of the holder:

- 5           (a) vary or revoke a condition of the right (not being a condition referred to in subsection (4)); or
- (b) specify a condition or a further condition to which the right is to be subject.

10           (7) The Minister may, in the notice given under subsection (6) or in a subsequent notice, require the holder of the fishing right to deliver that holder's fisherman's licence or statutory fishing right certificate to the Minister for the purpose of enabling the variation or revocation or the condition or further condition to be endorsed on the licence or certificate.

15           (8) A statutory fishing right ceases to have effect if the holder of the right surrenders it by written notice given to the Minister.

**What must the Minister do if he or she decides to allocate fishing rights?**

20           34H. (1) Whenever the Minister decides to make allocations of statutory fishing rights in relation to fishing in a specified managed fishery, the Minister must notify the decision by public notice.

- 25           (2) "**Public notice**" means notice published:
- (a) in the Gazette; and
- (b) in a newspaper circulating throughout New South Wales; and
- 30           (c) in such other newspaper or publication (if any) as appears to the Minister to be appropriate in the circumstances.

**What must a public notice under section 34H contain?**

35           34I. In publishing a notice under section 34H, the Minister must, for each statutory fishing right that the Minister has decided to allocate:

- (a) describe the fishing activities that will be authorised by the right; and

Fisheries and Oyster Farms (Management Plans) Amendment 1992SCHEDULE 1—AMENDMENTS—*continued*

- (b) specify the way in which the allocation is to be made and, if the allocation is to be made otherwise than by auction, tender or ballot, give full particulars of the procedures to be followed for selecting a person to whom the right will be allocated under section 34M; and 5
- (c) specify the conditions (if any) that are to be satisfied by persons who apply under section 34J for registration as eligible persons for the allocation; and 10
- (d) if an auction is to be held, specify the lowest bid that will be a qualifying bid for the purposes of section 34M (1); and
- (e) specify: 15
- any fees that are to be paid by applicants for registration; and
  - any period for which the right will (subject to this Division) remain in force; and
  - if the allocation is to be made otherwise than by auction or by calling public tenders—any charge that is to be made for the grant of the right; and 20
  - whether any such charge is to be paid in a lump sum or by instalments and, if the charge is to be paid by instalments, the number and frequency of those instalments; and 25
  - that a right of appeal as to the allocation of, or the refusal to allocate, a statutory fishing right is (if in fact there is such a right) available to persons registered as eligible persons; and
  - an address from which copies of the management plan may be obtained; and 30
  - any other matter in respect of the allocation that, in the opinion of the Minister, should be notified to prospective applicants; and
- (f) invite interested persons to apply to the Minister, in the approved form and within the period specified in the notice, to be registered as eligible persons for the allocation. 35

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*

SCHEDULE 1—AMENDMENTS—*continued*

**How are applicants to be registered as eligible persons?**

5 34J. (1) A person may apply to the Minister, in the approved form, for registration as an eligible person for the allocation of a statutory fishing right.

(2) The Minister must register as an eligible person for the allocation of a statutory fishing right each applicant who:

10 (a) satisfies the conditions (if any) for registration specified in the relevant management plan; and

(b) has paid the registration fee (if any) prescribed by the regulations; and

(c) in the case of an applicant tendering for the right—has complied with section 34K (2) and (3).

15 (3) The Minister must, as soon as practicable, notify the applicant in writing of the Minister's decision to register or not to register the applicant as an eligible person for the allocation of a statutory fishing right and, if the decision is adverse to the applicant, of the right of appeal that the person has against that decision.

20 **When and how must public tenders for fishing rights be made?**

34K. (1) This section applies whenever, under a management plan, public tenders are to be called for the allocation of a statutory fishing right.

25 (2) An application for registration must be accompanied by a tender.

(3) The tender must:

30 (a) specify how much the applicant is willing to pay for the fishing right; and

(b) be enclosed in a sealed, opaque envelope on which is written only:

- the name and address of the applicant; and
- words identifying the right to which the tender relates.

35 (4) The Minister must take reasonable steps to ensure that the envelope containing the tender is kept in such a way as to prevent premature disclosure of the amount specified in the



Fisheries and Oyster Farms (Management Plans) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

tender and, in particular, must take reasonable steps to ensure that the envelope is not interfered with until it is opened in accordance with the regulations.

**How are statutory fishing rights to be allocated? 5**

34L. (1) If statutory fishing rights in a managed fishery are to be allocated on the basis of existing usage or by auction, tender or ballot, the regulation embodying the relevant management plan must prescribe the procedures to be followed for selecting the person to whom the right will be allocated under section 34M. 10

(2) In particular, those procedures must include:

(a) in the case of statutory fishing rights to be allocated on the basis of existing usage—the procedures to be followed for ensuring the equitable selection of persons who are registered as eligible persons for the allocation of those rights; and 15

(b) in the case of an auction—the procedures to be followed:

- for holding the auction; and 20
- for holding another auction to allocate the right if the allocation at the auction lapses or is revoked; and

(c) in the case of a statutory fishing right to be allocated by public tender—the procedures to be followed: 25

- for ensuring the security of the envelopes containing tenders lodged by persons for the allocation of the right; and
- for opening those envelopes; and
- for recording the amount of each of the tenders contained in those envelopes; and 30
- for ranking the priority of those persons by reference to the tendered amounts recorded; and

(d) in the case of a ballot—the procedures to be followed: 35

- for conducting the ballot; and
- for ranking the participants in the ballot in the order of precedence allotted to them by the ballot; and

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*

---

SCHEDULE 1—AMENDMENTS—*continued*

- 5 (e) the preparation, when selection is made on the basis of existing usage, calling public tenders or conducting a ballot, of a precedence list of all the persons who have been registered as eligible persons for the allocation of the right in the order in which those persons have, in accordance with the prescribed procedures, been ranked in order of priority for the purposes of the allocation.
- 10 (3) If statutory fishing rights in a managed fishery are to be allocated on the basis of existing usage, the regulation embodying the relevant management plan must also specify the basis on which that usage is to be determined and, in particular, whether priority for selection is to be based on:
- 15 (a) quantities of fish previously taken by eligible persons from specified waters or from the fishery; or
- (b) the length of time eligible persons have previously been engaged in the fishing industry or in fishing in the fishery; or
- 20 (c) the amounts of money that have been invested by eligible persons in the fishing industry in New South Wales or in the fishery; or
- (d) any other relevant criterion relating to eligible persons.
- 25 **Who is to be entitled to be allocated a statutory fishing right?**
- 30 34M. (1) Whenever an auction is held for the allocation of a statutory fishing right, the right is to be allocated to the person who makes the highest qualifying bid for the right at the auction.
- (2) Whenever the allocation of a statutory fishing right is to be based on existing usage, calling public tenders or conducting a ballot, the right is to be allocated to the person ranked highest on the precedence list prepared for the purposes of allocating the right.
- 35 (3) When subsections (1) and (2) do not apply to the allocation of a statutory fishing right, the right is to be allocated to the person selected in accordance with the procedures specified for that purpose in the relevant management plan.

Fisheries and Oyster Farms (Management Plans) Amendment 1992SCHEDULE 1—AMENDMENTS—*continued*

- (4) When a statutory fishing right is allocated to a person under this section, the Minister must, as soon as practicable:
- (a) notify that fact in writing to that person and to each other person who was registered as an eligible person for the allocation of the right; and 5
  - (b) give to each such person a statement in writing of the reasons for allocating the right and of any right of appeal that the person has against the decision allocating the right. 10

**What action does the Minister have to take after allocating certain fishing rights?**

34N. (1) On making a decision as to the person or persons to whom the allocation of a statutory fishing right in a managed fishery is to be made, the Minister must, by notice published in the Gazette, specify the name of the person or persons to whom the right is to be allocated, together with a description of the right. 15

(2) The fact that an appeal has been made under section 119 (6) against the allocation of a statutory fishing right to a person does not prevent the right from being granted to and enjoyed by the person pending the outcome of the appeal. 20

**What is to happen if the person allocated a statutory fishing right does not pay the requisite charge etc.?**

34O. (1) If a person to whom a statutory fishing right is allocated under section 34M (1) does not, immediately after having been notified of that fact, tender the amount of charge payable for the right, the allocation of the right is revoked. 25

(2) If, within 30 days after a statutory fishing right has been allocated to a person, either because of section 34M (2) or (3) or because of a previous application of this subsection, the person does not tender the amount of any charge payable for the right: 30

- (a) the allocation of the right is revoked; and
- (b) if a precedence list has been prepared for the purposes of the allocation: 35
  - the name of the person is, because of this subsection, deleted from the list; and

Fisheries and Oyster Farms (Management Plans) Amendment 1992SCHEDULE 1—AMENDMENTS—*continued*

- the right is to be allocated to the person who then becomes the highest ranked person on the list.

5           **When does the Minister have to grant a statutory fishing right?**

34P. When a person to whom a statutory fishing right has been allocated has fulfilled the terms and pre-conditions subject to which the allocation was made, the Minister must grant the right to the person.

10

**When can a statutory fishing right be suspended?**

34Q. (1) The Minister may, by written notice given to the holder of a statutory fishing right, suspend the right if:

- 15           (a) any money required to be paid for the right (such as a charge or fee) is not paid when it becomes payable; or
- (b) the Minister believes on reasonable grounds that:
- there has been a contravention of a condition subject to which the right was granted; or
  - the holder of the right has, in an application under this Act, made a statement or given information that was, to the holder's knowledge, false or misleading in a material particular (not being an act or omission as to which the Minister has previously exercised powers under this subsection); or
- 20
- 25           (c) to do so would be in accordance with a condition to which the right is subject relating to suspension of the right; or
- 30           (d) the holder of the right does not comply with a requirement under section 34G (7) within 14 days after being notified of the requirement or within such further period as the Minister may allow.

35           (2) If a statutory fishing right is suspended under this section (otherwise than for the reason specified in subsection (1) (a) or (d)), then, subject to subsection (3), the suspension (unless it is revoked earlier) ends:

Fisheries and Oyster Farms (Management Plans) Amendment 1992SCHEDULE 1—AMENDMENTS—*continued*

- (a) if, within 28 days after the date of the suspension, the holder of the right, or a person who acted on behalf of the holder of the right, is prosecuted for an offence against this Act for the alleged act or omission in relation to which the right was suspended—when the proceedings for the offence are finally disposed of; or 5
- (b) in any other case—at the end of 28 days after the date of the suspension.
- (3) The Minister may, by written notice given to the holder of a statutory fishing right, suspend the right for such period as is specified in the notice, if the holder of the right is convicted of an offence against this Act or any other law relating to fishing (including a law of the Commonwealth, another country, another State or a Commonwealth Territory). 10 15
- (4) The Minister, by written notice given to the holder of a statutory fishing right suspended under this section:
- (a) may revoke the suspension; and
- (b) where the right was suspended for the reason specified in subsection (1) (a)—must revoke the suspension: 20
- if the money is paid; or
  - if the holder enters into an arrangement referred to in section 34R (1) (c) as to the payment of the money; or
  - if the whole of the money is remitted or refunded in accordance with the regulations; and 25
- (c) where the right was suspended for the reason specified in subsection (1) (d)—must revoke the suspension when the relevant requirement is complied with.
- When can a statutory fishing right be cancelled?** 30
- 34R. (1) The Minister may, by notice in writing given to the holder of a statutory fishing right, cancel the right:
- (a) if the holder of the right is convicted of an offence against this Act or any other law relating to fishing (including a law of the Commonwealth, another country, another State or a Commonwealth Territory); 35
- or

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*

---

SCHEDULE 1—AMENDMENTS—*continued*

- (b) if to do so would be in accordance with a condition subject to which the right was granted; or
- 5 (c) if any money to be paid for the right (such as a charge or fee) is not paid or the holder does not enter into an arrangement acceptable to the Minister for payment of the money within a specified period after the time the money first became payable.

10 (2) This section applies whether or not the Minister has previously suspended the fishing right concerned.

**Appointment of Registrar of Statutory Fishing Rights**

34S. The Minister is to appoint for the purposes of this Division a Registrar of Statutory Fishing Rights. The Registrar is to be an officer of NSW Fisheries.

15 **What are the Registrar's functions as to the register of statutory fishing rights?**

34T. (1) The Registrar is required to establish and keep a register of statutory fishing rights.

20 (2) The register may be kept wholly or partly by means of a computer.

(3) If the register is kept wholly or partly by means of a computer:

- 25 (a) references in this Act to an entry in the register are to be read as including references to a record of particulars kept by means of the computer and comprising the register or part of the register; and
- 30 (b) references in this Act to particulars being registered, or entered in the register, are to be read as including references to the keeping of a record of those particulars as part of the register by means of the computer; and
- 35 (c) references in this Act to the rectification of the register are to be read as including references to the rectification of the record of particulars kept by means of the computer and comprising the register or part of the register.

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*SCHEDULE 1—AMENDMENTS—*continued***What information is to be recorded, and what documents are to be included; in register?**

34U. The Registrar must register each statutory fishing right granted by the Minister by entering in the register the following particulars: 5

- (a) the name of the person to whom the right is granted;
- (b) a description of the right;
- (c) the period (if any) for which the right is granted;
- (d) the managed fishery for which the right is granted; 10
- (e) the conditions to which the right is subject;
- (f) such other particulars (if any) as are prescribed by the regulations.

**What interests in statutory fishing rights can be created?**

34V. (1) A transaction that purports to have the effect of creating, assigning, transferring, transmitting or extinguishing an interest in a statutory fishing right does not have that effect until it is registered under this section. 15

(2) A party to such a transaction may make an application to the Registrar for the transaction to be registered. 20

(3) Such an application must be in an approved form and must be accompanied:

- (a) by the document that embodies the transaction; and
- (b) by a document setting out such particulars (if any) as are prescribed by a regulation for the purposes of this paragraph; and 25
- (c) by duplicates of the documents referred to in paragraphs (a) and (b).

(4) When such an application is made to the Registrar, the Registrar must: 30

(a) register the transaction by entering in the register the following particulars:

- the name of the person who has acquired the interest in the fishing right;
- a description of the transaction; and 35

Fisheries and Oyster Farms (Management Plans) Amendment 1992SCHEDULE 1—AMENDMENTS—*continued*

- 5 (b) endorse on the document embodying the transaction and the duplicate of that document the fact of the entry having been made, together with the date and time of the making of the entry.
- (5) When those entries in the register have been made:
- 10 (a) the duplicate of the document embodying the transaction is to be retained by the Registrar and made available for inspection in accordance with this Division; and
- (b) the original document is to be returned to the person who applied for registration.

**Are trusts registrable?**

15 34W. The Registrar is not to be given notice of any kind of trust relating to a statutory fishing right and, if given, such a notice is not registrable.

**To what extent can the holder deal with a statutory fishing right?**

20 34X. (1) The holder of a statutory fishing right may, subject to this section, deal with the right as its absolute owner and give good discharges for any consideration for any such dealing.

- (2) Subsection (1):
- 25 (a) is subject to any rights appearing in the register to belong to another person and to section 34Y; and
- (b) is subject to any condition of a statutory fishing right that provides otherwise; and
- 30 (c) only protects a person who deals with the holder of the right as a purchaser in good faith for value and without notice of any fraud on the part of the holder.

(3) Equities in relation to a statutory fishing right may be enforced against the holder of the right except to the prejudice of a person protected by subsection (2).

**Do dealings with statutory fishing rights have to be approved?**

35 34Y. (1) A person must not assign, transfer, mortgage or otherwise create an interest in a statutory fishing right unless the Minister has, in writing, consented to the transaction.



Fisheries and Oyster Farms (Management Plans) Amendment 1992SCHEDULE 1—AMENDMENTS—*continued*

(2) The Minister may only refuse consent if the transaction would be contrary to the provisions of the relevant management plan or a condition to which the right is subject.

(3) A purported transaction that is in contravention of this section has no effect. 5

**What action must the Registrar take if a statutory fishing right is cancelled or suspended etc.?**

34Z. (1) If a statutory fishing right registered under this Division is suspended, cancelled or otherwise ceases to have effect, or a suspension of a statutory fishing right is revoked, then: 10

(a) if the right is suspended or a suspension is revoked—the Registrar must make an entry in the register to that effect; and 15

(b) if the right is cancelled or otherwise ceases to have effect—the Registrar must make an entry in the register to that effect and cancel the registration of the right.

(2) If, because of a decision made by the Minister or a court, an entry made by the Registrar under subsection (1) is no longer correct, the Registrar must rectify the register. 20

(3) If:

(a) the Registrar makes an entry in the register under subsection (1), or rectifies the register under subsection (2), concerning a statutory fishing right; and 25

(b) a person other than the holder of the right has an interest in the right; and

(c) the interest is one in relation to which a transaction has been registered under section 34V,

the Registrar must give the person and the holder of the right written notice of the entry or rectification. 30

**Is the Registrar to be concerned as to the effect of documents lodged for registration?**

34AA. The Registrar is not concerned with the effect in law of any document lodged under section 34V and the registration of the transaction concerned does not give to the document any effect that it would not have had if this Division had not been enacted. 35

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*

---

SCHEDULE 1—AMENDMENTS—*continued*

**Can the register and registered documents be inspected by the public?**

5 34AB. (1) On payment of the prescribed fee (if any) by a person, the Registrar must, during the ordinary business hours of the Registrar's office, make available for inspection the register and all duplicates of registered documents retained by the Registrar in accordance with section 34V.

10 (2) If the register is kept wholly or partly by means of a computer, this section is taken to be complied with by providing a computer print-out or providing access to a computer terminal that can be used to view the register.

**Does the register have any evidentiary value?**

15 34AC. (1) The register is evidence of any particulars registered in it.

20 (2) If the register is wholly or partly kept by means of a computer, a document issued by the Registrar reproducing in writing particulars included in the register, or the part kept by means of a computer, is admissible in legal proceedings as evidence of those particulars.

25 (3) A copy of the register or an entry in the register is, if purporting to be signed by the Registrar, admissible in evidence in legal proceedings as if the copy were the original.

(4) A copy of a duplicate document, or part of a duplicate document, retained by the Registrar under section 34V is, if purporting to be signed by the Registrar, admissible in evidence in legal proceedings as if the copy were the original document.

30 (5) The Registrar must, on application made by a person in an approved form, provide the person with a document or copy that is admissible in legal proceedings because of this section.

**Can the register be rectified?**

35 34AD. (1) A person aggrieved by:

(a) the omission of an entry from the register; or

(b) an entry made in the register without sufficient justification; or

Fisheries and Oyster Farms (Management Plans) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

- (c) an entry wrongly existing in the register; or  
 (d) an error or defect in an entry in the register,  
 may apply to the District Court for a rectification order.
- (2) On hearing such an application, the District Court may: 5
- (a) decide any question that it is necessary or expedient to  
 decide in connection with the rectification of the  
 register; and
- (b) make any order it thinks fit for the rectification of the  
 register. 10
- (3) The Registrar is entitled to:
- (a) be given notice of an application; and
- (b) appear and be heard in the proceedings.
- (4) The appropriate officer of the District Court is required  
 to serve a copy of a rectification order on the Registrar. 15
- (5) On receiving the copy of a rectification order, the  
 Registrar must rectify the register and notify in writing  
 persons affected by the order that he or she has made the  
 rectification.
- What other powers does the Registrar have to correct the  
 register?** 20
- 34AE. The Registrar may correct any clerical error or  
 obvious mistake in the register.
- Can the Minister or the Registrar incur legal liability for  
 anything done under this Division?** 25
- 34AF. Neither the Minister nor the Registrar or any other  
 officer of NSW Fisheries is liable in any civil proceedings  
 for anything done or omitted to be done in good faith in the  
 exercise or purported exercise of any function imposed or  
 conferred by this Division. 30
- Offences under the Division**
- 34AG. (1) A person must not:
- (a) make, or cause to be made or concur in making, an  
 entry in the register knowing it to be false or  
 misleading in a material respect; or 35

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*

SCHEDULE 1—AMENDMENTS—*continued*

(b) produce or tender in legal proceedings a document knowing that it falsely purports to be:

5

- a document or a duplicate or copy of a document lodged with the Registrar under this Division; or
- a copy of an entry in the register.

Maximum penalty: 50 penalty units.

(2) A person who, being the holder of a statutory fishing right:

10

- (a) contravenes a condition to which the right is subject; or
- (b) causes or permits a person acting on his or her behalf to contravene such a condition,

is guilty of an offence.

Maximum penalty: 100 penalty units.

15

(3) A person who, being a person acting on behalf of the holder of a statutory fishing right, contravenes a condition to which the right is subject is guilty of an offence.

Maximum penalty: 100 penalty units.

20

(4) On convicting a person of an offence under subsection (2) or (3), a court may, in addition to imposing a penalty for the offence, order that the person must not, during such period as the court determines, be on a boat in prescribed waters for the purposes of engaging in commercial fishing.

25

(6) A person who contravenes such an order is guilty of an offence.

Maximum penalty: 50 penalty units.

(7) Sections 119, 119A:

Omit section 119, insert instead:

30

**Appeals in relation to licences, restricted fishery permits and statutory fishing rights**

119. (1) A person who is dissatisfied with a decision under this Act:

35

- (a) refusing to issue or renew a licence; or
- (b) imposing conditions on the issue or renewal of a licence; or
- (c) suspending or cancelling a licence,

Fisheries and Oyster Farms (Management Plans) Amendment 1992SCHEDULE 1—AMENDMENTS—*continued*

may, within the prescribed period after being notified of the decision, appeal against the decision to the District Court.

(2) An application for the issue or renewal of a licence is to be taken to have been refused if the licence does not authorise the activities, or all of the activities, specified in the application. 5

(3) A person who is dissatisfied with a decision under the regulations:

(a) refusing to issue a restricted fishery permit (not being a permit issued in consequence of a call for public tenders); or 10

(b) refusing to renew such a permit; or

(c) suspending or cancelling such a permit,

may, within the prescribed period after being notified of the decision, appeal against the decision to the District Court. 15

(4) A person who is dissatisfied with a decision refusing to register the person as an eligible person under section 34J may, within the prescribed period after being notified of the decision, appeal against the decision to the District Court. 20

(5) An application for the issue or renewal of a licence or a restricted fishery permit, or an application for registration as an eligible person under section 34J, is to be taken to have been refused if the licence or permit is not issued or renewed, or the applicant is not registered: 25

(a) except as provided by paragraph (b)—within 60 days; or

(b) if the applicant and the licensing authority, the Director or the Minister (as the case requires) agree on a longer period—within the longer period, 30

after the date on which the application was made.

(6) A person:

(a) who is dissatisfied with a decision relating to the allocation of a statutory fishing right (not being a right allocated after holding an auction, calling public tenders or conducting a ballot); and 35

(b) who was registered under section 34J in relation to the allocation of such a right to which the decision relates,

Fisheries and Oyster Farms (Management Plans) Amendment 1992SCHEDULE 1—AMENDMENTS—*continued*

may, within the prescribed period after being notified of the decision, appeal against the decision to the District Court.

(7) An appeal under this section must:

- 5 (a) include details of the decision appealed against; and  
(b) specify the grounds of the appeal.

(8) If an appeal is made under this section, the District Court is required, as soon as practicable, to give notice of the appeal:

- 10 (a) in the case of an appeal under subsection (1)—to the licensing authority; and  
(b) in the case of an appeal under subsection (3)—to the Director; and  
15 (c) in the case of an appeal under subsection (4)—to the Minister; and  
(d) in the case of an appeal under subsection (6)—to the Minister and to each other person who was registered under section 34J in relation to the grant of the fishing right concerned.

20 On being given notice of the appeal, the authority, Director, Minister or person is a party to the appeal.

(9) An appeal under this section may be withdrawn at any time before a decision is made on it.

**Hearing and determination of appeals**

25 119A. (1) The District Court may, in hearing an appeal under section 119, exercise the powers and discretions that are conferred on the person who made the decision that is the subject of the appeal.

30 (2) After hearing an appeal under section 119 against a decision, the District Court may:

- (a) confirm the decision; or  
(b) vary the decision; or  
(c) set aside the decision and substitute a new decision.

(3) If the District Court:

- 35 (a) varies the decision appealed against; or  
(b) sets aside the decision and substitutes a new decision,

Fisheries and Oyster Farms (Management Plans) Amendment 1992SCHEDULE 1—AMENDMENTS—*continued*

the decision as varied or substituted is taken to be a decision of the licensing authority, the Director or the Minister, as the case requires, and the licensing authority, the Director or the Minister must give effect to the decision. 5

(4) A decision of the District Court in respect of an appeal under this section takes effect when the appellant is notified of the decision.

(5) A decision relating to the allocation of a statutory fishing right is not affected unless and until the decision is varied or set aside by the District Court as a result of an appeal under section 119 (6). 10

(8) Section 120 (**Regulations**):

After section 120 (4), insert:

(5) Section 34B (4) does not inhibit the operation of section 42 (1) of the Interpretation Act 1987 in relation to a regulation under this Act that does not embody a management plan. 15

## (9) Schedule F:

After Schedule E, insert: 20

**SCHEDULE F—PROVISIONS RELATING TO  
MEMBERS AND PROCEDURE OF MANAGEMENT  
ADVISORY COMMITTEES**

(Sec. 34C)

**Definition** 25

1. In this Schedule:

“committee” means a management advisory committee;

“member” means a member of a committee and includes the chairperson.

**Terms of office of members** 30

2. Subject to this Schedule, a member holds office for such period, not exceeding 3 years, as is specified in the member's instrument of appointment and is eligible, if otherwise qualified, for re-appointment.

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*

SCHEDULE 1—AMENDMENTS—*continued*

**Vacancy of member**

3. (1) The office of a member becomes vacant if the member:

- 5 (a) dies; or  
(b) completes a term of office and is not re-appointed; or  
(c) resigns the office by notice in writing addressed to the Minister; or  
10 (d) is absent from 4 consecutive meetings of the committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the  
15 committee for having been absent from those meetings; or  
(e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an  
20 assignment for their benefit; or  
(f) becomes a mentally incapacitated person; or  
(g) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for  
25 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a member from office at any time.

**Filling of vacancy in office of member**

30 4. If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

**Acting chairperson**

5. (1) A committee may appoint a person to act as the chairperson of the committee:

- 35 (a) during a vacancy in the office of chairperson; or



Fisheries and Oyster Farms (Management Plans) Amendment 1992SCHEDULE 1—AMENDMENTS—*continued*

- (b) during a period when the chairperson is absent from duty or from New South Wales or is for any other reason unable to perform his or her duties as chairperson, 5
- but a person appointed to act during a vacancy must not continue to act as chairperson for more than 12 months.
- (2) While a person is acting as chairperson of a committee, the person has all the functions of the chairperson and is to be taken to be the chairperson. 10
- Remuneration and allowances**
6. (1) The chairperson (including an acting chairperson) is entitled to be paid such remuneration and allowances (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the chairperson. 15
- (2) A member is entitled to be paid such allowances (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member. 20
- Effect of certain other Acts**
7. (1) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or 25
- (b) prohibiting the person from engaging in employment outside the duties of that office,
- the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member. 30
- (2) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.
- Personal liability of members etc.**
8. A matter or thing done by a committee or a member or any person acting under the direction of a committee does 35

*Fisheries and Oyster Farms (Management Plans) Amendment 1992*

SCHEDULE 1—AMENDMENTS—*continued*

not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

**Disclosure of pecuniary interests**

9. (1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of a committee; and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the committee.

(2) A disclosure by a member at a meeting of the committee that the member:

- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause are to be recorded by the committee in a book kept for the purpose and that book is to be open at all reasonable hours at the head office of NSW Fisheries for inspection by any member of the committee.

(4) After a member has disclosed the nature of an interest in any matter, the member is not, unless the committee by special resolution otherwise determines:

- (a) to be present during any deliberation of the committee with respect to the matter; or

Fisheries and Oyster Farms (Management Plans) Amendment 1992SCHEDULE 1—AMENDMENTS—*continued*

- (b) to take part in any decision of the committee with respect to the matter.
- (5) For the purposes of the making of a determination by the committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates is not: 5
- (a) to be present during any deliberation of the other members for the purpose of making the determination; or 10
- (b) to take part in the making by the other members of the determination.
- (6) A contravention of this clause does not invalidate any decision of the committee.
- (7) A member who contravenes this clause vacates office as a member. 15
- General procedure**
10. The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be determined by the committee. 20
- Quorum**
11. The quorum for a meeting of a committee is a majority of the members for the time being of the committee.
- Presiding member** 25
12. (1) The chairperson or, if the chairperson is absent, the person appointed as acting chairperson is to preside at a meeting of the committee.
- (2) The person presiding at any meeting of a committee has a deliberative vote and, in the case of an equality of votes, has a casting vote. 30
- Voting**
13. A decision supported by a majority of the votes cast at a meeting of a committee at which a quorum is present is the decision of the committee. 35

Fisheries and Oyster Farms (Management Plans) Amendment 1992SCHEDULE 1—AMENDMENTS—*continued***Transaction of business outside meetings or by telephone etc.**

5 14. (1) A committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the committee for the time being, and a resolution in writing approved in writing by a majority of those members is to be regarded as a decision of the committee.

10 (2) A committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

15 (3) For the purposes of:  
 (a) the approval of a resolution under subclause (1); or  
 (b) a meeting held in accordance with subclause (2),  
 the chairperson and each member have the same voting rights as they have at an ordinary meeting of the committee.

20 (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the committee.

(5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

25 **Minutes**

15. A committee must cause full and accurate minutes to be kept of the proceedings of each meeting of the committee.

**First meeting**

30 16. The Minister is to call the first meeting of a committee in such manner as the Minister thinks fit.

---