

### **3 THE FISHERIES MANAGEMENT ACT 1994**

#### **3.1 The Introduction of the *Fisheries Management Act 1994***

##### **3.1.1 Rationale for the *Fisheries Management Act 1994***

By the early 1990s, New South Wales' fish stocks were under increasing pressure as a result of habitat degradation and increased fishing effort stemming from more efficient fishing technology and growth in the recreational and commercial sectors. Historically the NSW commercial fishery had been managed on an open access basis with effort determined by market forces. By 1992/93 the industry was based on the catch of 265 species landed at 55 ports using 44 fishing methods in 33 ocean zones and 84 estuaries.<sup>1</sup> The management of such a diverse multi-method, multi-species fishery was further complicated by the inherent difficulties of accurately determining the catch of the recreational sector and the level of black market activity.

Until this time, the response of fisheries management to this challenge had focussed on the capping of effort in the commercial sector through limiting the number of fishers in the industry and restricting commercial fishers to set areas. Control over the size of the recreational catch was limited to fish size and bag limits.

In recognition of the need to effectively limit total fishing effort, protect habitat, and provide greater security for the commercial industry, a working group was formed to review the existing *Fisheries and Oyster Farms Act 1935* in 1993. A member of the Working Group, Dr Michael Young, has described how the failure of the *Fisheries and Oyster Farms Act 1935* to provide fishers with long term access rights encouraged opportunistic, non-sustainable practices:

The previous NSW Fishery management system was based on annual fishing licenses, renewed by custom every year. The annual licence framework created uncertainty as there was no guarantee of renewal and license conditions were often changed in what appeared to be an ad hoc manner. Regulations were reactionary in nature and generally implemented or modified each time a problem emerged.

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<sup>1</sup> E Scibner and A Kathuria (1996). *New South Wales Commercial Fisheries Statistics 1992/93*, New South Wales Fisheries, Fisheries Research Institute, Cronulla,

Fishers argued that this encouraged people to find ways to make a quick profit and cheat the system.<sup>2</sup>

Dr Young also outlined the circumstances that led to the review as follows:

In common with many other of the world's fisheries, fish stocks in NSW have been declining, recreational fishing pressure is increasing, existing license provisions encourage the use of inefficient gear and technology, and incomes from fishing are low. In addition, the regulatory regime prevented investment in the gear and equipment necessary for efficient exploitation of the available stock, and a large black market of fish existed. There was wide spread political dissatisfaction with various governments' inability to manage the State's fisheries in anything other than a reactionary and crisis management style. The challenge was to find a mechanism that would solve as many problems as possible.<sup>3</sup>

The recommendations of the working group led to a decision by the Greiner Government to replace the *Fisheries and Oyster Farms Act 1935* with what was to become the *Fisheries Management Act 1994*. Mr Paul Crew, the Director of Fisheries at the time, told the Standing Committee that the Department had consulted widely with recreational and commercial fishing representatives while drafting the new Act. Referring to the level of support for the *Fisheries Management Act 1994*, Mr Crew stated:

The work that preceded the development of the Act was done in total consultation with both the commercial and the recreational sectors of the New South Wales fishing industry. I made a major effort to visit as many fishing ports and have as many public meetings with fishermen and industry people as I could with my staff. I had a dedicated and professional staff, and the industry showed a strong preparedness to work with us. In fact, the industry developed working teams to progress aspects of the management plans for development of a new

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<sup>2</sup> M Young (1995). *The Design of Fishing Right Systems - the New South Wales Experience*, Ocean and Coastal Management, 1995. Vol. 28, (1-3), p 45-61

<sup>3</sup> M Young (1995), *The Design of Fishing Right Systems - the New South Wales Experience*, p 45-61

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Fisheries Act. I was endeavouring as quickly as possible to bring the Government and industry together in a partnership arrangement. I have always believed passionately in the need for industry to be deeply involved in any issues that affect its wellbeing and future.

At every opportunity I made it perfectly clear that this was not going to be a Government or Departmental push to deliver what it felt it should deliver; it was going to be a partnership, and industry had to have some stewardship of its future. The process started on a fairly rocky road, probably because for several decades the industry had been used to almost a confrontational approach from the Department. Generally, consultation was fairly minimal in as much as the industry was told what would happen, rather than be involved in the process to any great degree. I sought to turn that around totally. I believe that I was successful in doing that because when the Act was finally debated in the House I thought it was unprecedented that members of the recreational and commercial sectors were present in the House supporting the Act all the way through. When the Act was finally passed there was jubilation in the then Minister's office; the executive officers of the recreational and commercial sectors at last felt that they had an Act that would provide some security for their future. They now had management in place that they could work to achieve. It was also a fairly happy day for me because we had achieved something fairly quickly and, more importantly, it was done with the total support of the executive bodies of the commercial and recreational sectors of the industry.<sup>4</sup>

The *Fisheries Management Act 1994* was proclaimed on 16 January 1995.

### **3.1.2 Definition and Aim of Share Managed Fisheries**

The key new management strategy embodied in the *Fisheries Management Act 1994* was the concept of share management. Share management is designed to

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<sup>4</sup> Evidence of Mr Crew, 4 April 1997 p 3

encourage the sustainable exploitation of fish stocks by providing participants with long term “property rights” or shares in the fishery. Dr Young wrote:

The legislation establishes a ‘core property right’ as a legally transferable entitlement to a proportional share of all commercial fishing opportunities associated with the fishery.<sup>5</sup>

Dr Trevor Ward, Senior Biodiversity Specialist - CSIRO, justifies the granting of property rights as follows:

Without property rights, markets fail to efficiently allocate the resources used in the harvest of fish. This market failure leads to overcapitalisation of the fishery, excessive fishing effort levels and biological overfishing of the stocks, ie, too many fishermen harvesting too few fish”.<sup>6</sup>

A share of a fishery may be in the form of: a proportion of the total allowable catch (TAC) for the fishery; units of net size, engine power and/or boat length; or a combination of these and other factors.

The new share management provisions of the *Fisheries Management Act 1994* incorporated a user pays approach to fisheries management by providing for fees to be levied on commercial fishers to meet the cost of management and to provide a return to the community for the use of a publicly owned resource.

### **3.2 Description of the *Fisheries Management Act 1994***

A brief description of the contents of each part of the *Fisheries Management Act 1994* is given below. Particular attention is given to those parts of the Act covering issues that received most attention during the Inquiry.

#### **3.2.1 Part 1- Preliminary**

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<sup>5</sup> M Young (1995), *The Design of Fishing Right Systems - the New South Wales Experience*, pp 45-61

<sup>6</sup> T Ward, D Leadbitter and K Ridge (1997), *Maintaining Biodiversity in Sustainable Fisheries*, draft review and scoping paper prepared for Environment Australia

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Part 1 describes the objects of the Act, provides definitions for terms used in the Act, and specifies the waters to which the Act applies.

The general object of the Act is described in s. 3(1) as being to conserve, develop and share the fishery resources of the State for the benefit of present and future generations. The specific objects of the Act are listed in s.3(2) as follows:

- (a) to conserve fish stocks and protect key fish habitats;
- (b) to promote a viable commercial fishing industry;
- (c) to provide quality recreational fishing opportunities;
- (d) to appropriately share resources between the users of the resource; and
- (e) to promote ecologically sustainable development.

While the term “ecologically sustainable development” (ESD) is not defined in the Act, s. 30 states that when determining allowable catches, the TAC Committee is to have regard to conservation, maintenance of biodiversity, and the precautionary principle. These are the essential elements of ESD as they are defined in the Commonwealth *Fisheries Management Act 1991*.

### **3.2.2 Part 2 - General Fisheries Management**

Part 2 of the Act provides the “tool box” for fisheries management in New South Wales. Division 1 provides for the notification and duration of fishing closures, with s. 8(1) defining a fishing closure in the following terms:

The Minister may from time to time, by notification, prohibit, absolutely or conditionally, the taking of fish, or a specified class of fish, from any waters or from specified waters.

Division 2 provides for the declaration by regulation of bag limits, minimum legal sizes, maximum legal sizes, or legal size ranges, for any species of fish. It also provides for the declaration of protected species.

Division 3 provides for the registration or prohibition of classes of fishing gear and the lawful use of nets and traps.

Division 4 provides for the establishment of a Total Allowable Catch Setting and Review Committee for the purpose of determining the total allowable catch for any commercial fishery.

S. 27(1) requires that the TAC Committee consist of at least four members appointed by the Minister including: a Chairperson neither engaged in the administration of the Act or commercial fishing; a natural resource economist not employed by the Government; a fishery scientist not employed by the Government; and persons “who have appropriate fisheries management qualifications”.

S. 29 provides for the TAC Committee to make TAC determinations free from Ministerial control or direction, although the Minister may direct the TAC Committee on the procedure to be followed in making a determination and may require the TAC Committee to reconsider a determination. S. 31 requires the TAC Committee to undertake public consultation prior to making a determination and s. 32 provides for reviews of TAC determinations.

Division 5 outlines legitimate defences to the taking of otherwise illegal fish, provides for the public right to fish privately owned inland waters under certain conditions, the removal of obstructions to recognised fishing grounds, and the making of regulations relating to the general management of fisheries.

Divisions 1,2,3, and 5 also specify the penalties relating to breaches of these provisions.

### **3.2.3 Part 3 - Commercial Share Management Fisheries**

Part 3 contains the provisions for commercial share managed fisheries.

#### **3.2.3.1 Staged Implementation**

Division 1 outlines the steps required for the staged implementation of a share managed fishery. The stages outlined in s.(41) are summarised as follows:

**TABLE 3.1**

#### **Steps in Staged Implementation**

Stage 1	Consultation	The Minister is to consult relevant industry bodies about which fisheries should become share managed fisheries.
Stage 2	Identification of fishery and shareholders	When the fishery is identified as a share management fishery by the inclusion of a description of the fishery in schedule 1. During the second stage, an interim Management Advisory Committee for the fishery is established, the criteria for the allocation of shares in the fishery are determined, eligible persons are entitled to apply for shares and shares are issued provisionally.
Stage 3	Access to fishery limited to shareholders	When access to the fishery is limited to provisional shareholders. Appeals against the provisional issue of shares are determined and a draft management plan for the fishery is prepared.
Stage 4	Full implementation	When the management plan for the fishery commences, shareholdings are confirmed, and other rights of shareholders are fully identified, exercisable, and subject to review.

### 3.2.3.2 Declaration of Share Management Fisheries

The Act does not clearly specify the criteria on which the suitability of a fishery to enter share management is determined, but Division 2 provides guidelines for industry consultation as follows:

- 43(1) The Minister is required to consult with relevant commercial fishing industry bodies about which fisheries should become share managed fisheries.

A fishery will be declared a share managed fishery by proclamation by the Governor on the recommendation of the Minister.

### 3.2.3.3 Compensation Provisions

The removal of a fishery from Schedule 1 (share management fisheries) cancels all shares in the fishery. The provisions and contingencies for the removal of a fishery from Schedule 1 are contained in s.44 of the Act. S.44 states in part:

- 44(3) If the description of the fishery is omitted after the commencement of the management plan for the fishery, the holders of the cancelled shares are entitled to

compensation from the State for the market value before the cancellation of the shares they held.

44(4) The amount of compensation payable is to be determined by agreement between the Minister and the person entitled to compensation. If the amount of compensation is not agreed, it is to be determined by the Valuer-General.

44(6) A person who is dissatisfied with the amount of compensation offered to the person under this section or with any delay in the payment of compensation may appeal to the Land and Environment Court.

#### **3.2.3.4 Issue of Shares**

Division 3 outlines the way in which shares are issued to participants in a share management fishery. Shares are to be allocated in accordance with s. 46 to 50 as follows. Applications for shares will be sought through the issue of a public notice outlining the share allocation provisions. The issue of shares will be dependent on the fisher's historical participation, catch history and/or previous entitlements. Shares will then be issued on a provisional basis subject to appeals to the Share Management Fisheries Appeals Panel in relation to the allocation of shares in accordance with s.82 to 88 of Division 9. The fishery will then become a limited access fishery until all appeals in relation to the fishery have been finalised and the fishery's management plan has been developed. The Minister then makes the final issue of shares to eligible persons with effect from the commencement of the management plan.

#### **3.2.3.5 Management Plans and Management Advisory Committees**

The operational basis for each declared share management fishery will be contained within a management plan. Division 5 of the Act requires the preparation of such plans, outlines their general content, and specifies the penalties to apply for contravention of a plan. S. 57(1) of the Act identifies the types of operational controls that the plan may include. These include the species that can be fished, the times and periods that fish can be taken, and the use of boats and gear in the fishery. In addition, the management plan must include performance indicators to monitor the degree to which the plan's objectives and ecologically sustainable



development are being attained and specify at what point a review of the management plan is required.

Management Advisory Committees (MACs) have been established under the *Fisheries Management Act 1994* as amended by the *Fisheries Management Amendment (Advisory Bodies) Act 1996*<sup>7</sup> in accordance with the Fisheries Management (General) Amendment (Management Advisory Committees) Regulation 1997.

S. 230(4) of the *Fisheries Management Act 1994* (as amended) lists the functions of each Management Advisory Committee as follows:

- (a) to advise the Minister on the preparation of any management plan or regulations for the fishery,
- (b) to monitor whether the objectives of the management plan or those regulations are being attained,
- (c) to assist in a fishery review in connection with any new management plan or regulations, and
- (d) to advise on any other matter relating to the fishery.

Management Advisory Committees provide a forum for relevant stakeholders to consult with the Department on the development of a management plan. Management plans for each of the fisheries are to be made by regulation, with each management plan coming into effect with the commencement of the regulation.

### **3.2.3.6 Matters Related to Shareholding**

Participation in a share managed fishery is dependent on possessing the minimum number of shares fixed for that fishery by the management plan. S. 67 allows the setting of separate minimum shareholdings for persons who acquire shares after the initial share issue and the staged increase of minimum shareholding requirements over time.

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<sup>7</sup> For more detail on the role of MACs and other fisheries advisory bodies within the *Fisheries Management Act 1994* see the Standing Committee's Report Number 16: *Report on the Fisheries Management Amendment (Advisory Bodies) Act 1996*.

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The provisions determining maximum shareholding are as follows:

- 72(1) The maximum shareholding in a share managed fishery is the maximum share holding fixed in the management plan for the fishery.
- 72(2) If no maximum shareholding is fixed in the plan, the maximum share holding is 5 per cent of the number of shares in the fishery at the commencement of the plan.

S. 73 of the Act sets out the provisions for the duration of shareholdings as follows:

- 73(1) Shares in a share managed fishery are issued for a period of ten years (calculated from the commencement of the management plan for the fishery).

The shareholding is then renewed for another ten years either at expiration, provided no fishery review has been conducted during this period, or from the date of commencement of any new management plan introduced as a result of a fishery review.

### **3.2.3.7 Management and Community Contribution Levies**

The Act provides for the payment by shareholders in share management fisheries of both a management charge and a community contribution proportional to their share holding. S. 76 outlines the requirements in relation to the management charge as follows:

- 76(2) The management charge is to be such amount as the Minister considers necessary to meet the costs of management for that fishery, being costs of management that are attributed to industry by the management plan for the fishery.

S. 76 also states that the management plan is to prescribe the maximum management charge payable and may authorise payment of the charge by instalment.

With respect to the community contribution, s. 77 states, inter alia:

- 77(1) Shareholders in a share management fishery are required to make a periodic contribution for their right of access to the fishery (a “**community contribution**”).
- 77(5) The rate of the community contribution, method of its payment and other matters concerning its payment are to be prescribed by the management plan, and not otherwise.
- 77(6) The management plan for the fishery may exempt a shareholder from making the community contribution (or reduce any such contribution) if the full rights to fish in the fishery in accordance with the share holding have not been exercised during the relevant period.
- 77(7) The Treasurer’s concurrence is required before any provisions relating to community contributions are inserted in a management plan.

In addition, s. 77 also states that community contributions for a share management fishery are payable after the commencement of the management plan for that fishery and are to be credited to the Consolidated Fund.

### **3.2.3.8 Allocation and Transfer of TAC**

With respect to the allocation of total allowable catch for share management fisheries the Act states:

- 78(2) The Minister is to allocate among shareholders in all relevant share management fisheries the whole total allowable catch of fish for the commercial fishing sector.
- 78(3) An allocation among shareholders in a particular fishery is to be made in proportion to the shareholdings of the persons concerned.

- 78(5) An allocation is to be made to all shareholders, whether or not they hold the minimum shareholding required to fish in the fishery.

With respect to the transfer of total allowable catch for share management fisheries, the Act states:

- 79(1) A shareholder in a share management fishery may transfer to any other shareholder in that fishery the whole or any part of his or her allocation under this Division of the total allowable catch concerned in accordance with the management plan for the fishery.

In addition, s. 80 provides for the carrying over of unused TAC by a shareholder from one period to the next, or the bringing forward of part of the next period's TAC to the present period, subject to the management plan.

### **3.2.4 Part 4 - Licensing and Other Commercial Fisheries Management**

Division 1 deals with commercial fishing licences.

S. 102 states:

- 102(1) A person must not take fish for sale from waters to which this Act applies unless the person is authorised to do so by a commercial fishing licence.

S. 103 stipulates who may hold such a licence, specifically excluding corporations from doing so. S. 104 lists the provisions relating to the licensing of commercial fishers, including the time such a license remains in force and the grounds for Ministerial cancellation or suspension of a license.

S. 106 of the *Fisheries Management Act* requires that:

- 106(1) A commercial fisher must, if the regulations so require, pay to the Minister an annual contribution towards:
- (a) the cost of carrying out research into commercial fisheries; or

- (b) any other costs relating to the commercial fishing industry

106(2) The amount of the contribution is to be specified in or determined by the regulations.

Division 2 deals with the licensing of commercial fishing boats and the registration of fishing boat crew members. S. 107 states:

107(1) the master of a boat must not use the boat for any of the following purposes unless the boat is licensed under this Division:

- (a) to take fish for sale from waters to which this Act applies;
- (b) to land fish in New South Wales that were taken from other waters (after the boat departed from a port in New South Wales).

Division 3 relates to exploratory, developmental and other restricted fisheries. Any fishery which is not share managed is classed as a restricted fishery under s. 111 of the Act:

111(1) The regulations may declare that the fishery (not being a share managed fishery) is a restricted fishery for the purposes of this Act during the period specified by the declaration.

111(2) The fishery may be described in the declaration as an exploratory, developmental or other class of restricted fishery.

S. 112 requires that persons taking fish for sale in a restricted fishery not only possess a commercial fishing licence, but that that licence is also endorsed to do so.

S. 115 relates to compensation and states:

115 Compensation is not payable by or on behalf of the State because a fishery ceases to be a restricted

fishery at the end of the period for which it was declared to be a restricted fishery or at any time during that period.

Division 4 requires that a person who receives fish for commercial purposes from a commercial fisher be a registered fish receiver, and also requires that such fish receivers supply fisheries officers with certain information regarding fish received.

Division 5 requires commercial fishers to keep records of all fish taken by the fisher and/or boat and to send a copy of such records to the Director of Fisheries. The Division also requires persons in possession of a prescribed quantity of fish to produce records in relation to the fish when requested to do so by a fisheries officer.

Division 6 establishes a right of appeal to the district court if a person is dissatisfied with decisions made in relation to licensing under this Part.

### **3.2.5 Part 5 - Co-operation with Commonwealth and Other States in Fisheries Management**

Part 5 enables the State to participate in the establishment and operation of joint fisheries management authorities (Joint Authorities) with the Commonwealth and/or other states. Division 1 contains definitions. Division 2 provides for the Minister to exercise powers conferred on the Minister by Joint Authorities and, similarly, for Joint Authorities to delegate powers to individuals, including those employed by States and the Commonwealth.

Division 3 provides for the management of a particular fishery by arrangement with other States and/or the Commonwealth in accordance with s. 71 or 72 of the Commonwealth *Fisheries Management Act 1991*. S. 136 requires that fisheries managed by New South Wales under such an arrangement are to come under the provisions of the *Fisheries Management Act 1994* except in matters relating to foreign boats and matters that occurred before the arrangement took effect. S. 137 states that the objectives of Joint Authorities charged with the management of fisheries under New South Wales law are to be:

- ensuring, through proper conservation, preservation and fisheries management measures, that the living resources of the waters to which this Act applies are not endangered or overexploited; and

- achieving the optimum utilisation and equitable distribution of those resources.

S. 138 enables such a Joint Authority to exercise the powers conferred on the Minister by the Act to the exclusion of the Minister. S. 141 allows the Governor to make or amend regulations to give effect to a decision of a Joint Authority.

### **3.2.6 Part 6 - Aquaculture Management**

Division 1 includes definitions and provides for the determination of aquaculture development plans by the Minister. Such plans may relate to any aspect of the commercial aquaculture industry including aquaculture of a particular species of fish or marine vegetation or aquaculture in a particular area.

These plans may contain:

- the description of areas suitable for specified types of aquaculture;
- suitable methods for undertaking any type of aquaculture; and
- suitable species for aquaculture in a particular area.

Such development plans must include performance indicators to monitor the effectiveness of the plan and whether ecologically sustainable development is being attained. Aquaculture development plans must also specify at what point a review of the plan is required when a performance indicator is not being satisfied.

Division 2 relates to aquaculture permits, with s. 144 stating:

144(1) A person must not undertake aquaculture except under the authority of an aquaculture permit.

Such permits must specify the area or areas within which the holder is authorised to undertake aquaculture and the species authorised to be cultivated. The Division also outlines the permit application, suspension, cancellation, and appeals process, and provides for the payment to the Minister of an annual contribution towards the costs of administration, environmental monitoring, and research as regulated.

Division 3 enables the lease of public water land for aquaculture. Such leases must specify the species of fish or marine vegetation authorised to be cultivated within the

leased area. The term of such leases must not exceed 15 years. An aquaculture lease does not confer the right of exclusive possession of the leased area. In addition to an amount paid in connection with an auction or public tender for an aquaculture lease, an additional periodic rental is to be paid by the lessee.

Division 4 deals with diseased fish and marine vegetation within an aquaculture lease. The Division provides the Minister with the power to declare a quarantine area, thereby: restricting or prohibiting the sale of fish or marine vegetation from the area; restricting or prohibiting the taking of fish or marine vegetation to or from the area; and requiring specified action by the permit holder.

Division 5 relates to miscellaneous provisions, including the ordering of restoration work to be carried out in relation to illegal aquaculture operations.

### **3.2.7 Part 7 - Protection of Aquatic Habitats**

Part 7 of the Act relates to the protection of aquatic habitats. S. 192 states:

192(1) The Minister may, in accordance with this section, determine plans for the protection of any habitat of fish ("habitat protection plans"), whether the habitat is critical for the survival of the species or required to maintain harvestable populations of the species.

192(2) A habitat protection plan:

(a) may relate to habitat that is critical for spawning, shelter or other reason; and

(b) may apply generally or to particular areas or fish; and

(c) is to describe the importance of particular habitat features to which it applies; and

(d) may set out practical methods for the protection of any such habitat features; and



(e) may contain any other matter concerning the protection of the habitat of fish that the Minister considers appropriate.

Public consultation is required before such plans are determined. The Act also states:

193(2) Public authorities are to have regard to any habitat protection plan that is relevant to the exercise of their functions.

If a public authority proposes to exercise any function that is inconsistent with a habitat protection plan, and the conflict cannot be resolved between the Ministers involved, the matter is to be referred to the Premier for resolution. Any such resolution is to be given effect whether or not it conflicts with a habitat protection plan.

Division 2 relates to aquatic reserves. In accordance with s. 194, the Minister may declare a specified area an aquatic reserve to enhance the protection of fish and fish habitat in the area concerned but must obtain the consent of the land owner before declaring an area to be an aquatic reserve. The Minister may also revoke or vary the declaration of an aquatic reserve after tabling the notice of revocation or variation in both Houses of Parliament. Both Houses may disallow the proposed revocation or variation. The protection afforded to aquatic reserves are regulated in accordance with s. 197:

197 The regulations may:

- (a) prohibit or regulate the taking of fish or marine vegetation from aquatic reserves; and
- (b) provide for the management, protection and development of aquatic reserves; and
- (c) classify areas within an aquatic reserve for different uses (such as recreational uses or as a sanctuary).

Division 3 applies to dredging and reclamation other than for the purposes of mining, restoration or maintenance of a navigation channel, or for the removal of accumulated silt from a stormwater channel. S. 199 requires public authorities to

give notice to the Minister of any proposed dredging or reclamation work in any waters and consider any matters raised by the Minister in relation to such notice. If a dispute arises between the Minister and the public authority in relation to such work, and the dispute cannot be resolved at Ministerial level, the dispute is to be referred to the Premier for resolution. S. 201 prohibits the carrying out of dredging or reclamation work, other than that authorised by the *Crown Lands Act 1989* or authorised by a public authority, except under the authority of a permit issued by the Minister. The Minister also has the power to order remedial work necessary to rectify the damage caused by illegal dredging or reclamation work to fisheries or fish habitats.

Division 4 relates to the protection of mangroves, seagrasses and any other marine vegetation prescribed by the regulations, and requires persons who wish to cut, remove or destroy such vegetation on public water land or an aquaculture lease to obtain a permit from the Minister.

Division 5 relates to the protection of spawning salmon, trout and certain other fish. The Division prohibits the taking or disturbing of salmon, trout and any other fish prescribed by the regulations while spawning and the damaging of gravel beds used by salmon or trout for spawning unless authorised to do so by an environmental planning instrument under the *Environmental Planning and Assessment Act 1979*.

Division 6 deals with fish declared to be noxious by regulation, and prohibits the live possession or sale of such fish. The Division also authorises the seizure and destruction of live noxious fish.

Division 7 relates to the release or importation of fish and is aimed at the prevention of the spread of fish diseases and the unauthorised introduction of fish species. S. 216 prohibits the release of live fish into any waters except under the authority of a permit issued by the Minister. S. 217 prohibits the importation into New South Wales of live fish except under the authority of a permit issued by the Minister, and also makes it an offence to purchase or be in possession of such fish.

Division 8 relates to miscellaneous provisions including those relating to fish passage. S. 218 allows the Minister to order persons or public authorities constructing, altering or modifying a dam, weir, or reservoir on a waterway to provide for fish passage by constructing or repairing a fishway. S. 219 makes it an offence to obstruct fish passage in a bay, inlet, river or creek through the use of nets or other material.

### **3.2.8 Part 8 - Administration**

Part 8 of the Act relates to the administration of the Act. Division 1 allows the Minister to acquire land by agreement or compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*, carry out or assist research, and delegate any functions of the Minister under the Act to the Director of Fisheries.

Division 2 (as amended) enables the Minister to establish Ministerial advisory bodies and the Director of Fisheries to establish Management Advisory Committees for specific fisheries.

### **3.2.9 Part 9 - Enforcement**

Part 9 relates to the enforcement of the Act. Division 1 provides definitions. Division 2 provides for the appointment of fisheries officers by the Minister, extends the powers of a fisheries officer to police officers, and renders obstructing, assaulting, or impersonating a fisheries officer an offence.

Division 3 provides fisheries officers with the power to, subject to certain conditions:

- arrest a person found to be committing, or suspected of having committed, a fisheries offence;
- stop, board and search boats;
- examine fishing gear or other equipment;
- require gear to be removed from the water;
- enter and search non-residential premises;
- detain and search vehicles;
- enter waters and pass along the banks or borders of any waters;
- enter and examine aquaculture farms;
- require the production of records relating to commercial fishing activities and fish receivers;

- require the production of appropriate fishing authorities (licenses etc);
- seize fishing authorities; and
- require the provision of information, including names and addresses, from the master of a licensed fishing boat, other persons on board such a boat, or persons the officer has reason to believe is engaged in commercial fishing activities or fishing offences.

The Division also provides for the application by a fisheries officer to an authorised justice for a search warrant, and the pursuit of a person or boat outside the coastal waters of New South Wales subject to certain conditions.

Division 4 provides a fisheries officer with the power to seize anything that the officer has reason to believe is connected with a fisheries offence, including boats, fishing gear and fish, under certain conditions.

Division 5 relates to criminal proceedings, including the serving of penalty notices. S. 278 imposes a time limit of two years for the commencement of such proceedings. Division 6 relates to civil enforcement of the Act and enables persons to bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of the Act, whether or not any right of that person has been or may be infringed.

### **3.2.10 Part 10 - Miscellaneous**

Part 10 of the Act requires the Director of Fisheries to include in the NSW Fisheries annual report information indicating how the objects of the Act have been, and are proposed to be, achieved. The Part also outlines the procedure to be followed in relation to public consultation where it is required by the Act, and requires a review of the Act's policy objectives to be conducted by the Minister as soon as possible following the passing of five years since the Act commenced. With respect to native title rights and interests, s. 287 states:

287 This Act does not affect the operation of the *Native Title Act 1993* of the Commonwealth or the *Native Title (New South Wales) Act 1994* in respect of the recognition of native title rights and interests within the meaning of the Commonwealth Act or in any other respect.

### **3.3 Associated Regulations and Amendments**

A number of regulations have so far been made under the *Fisheries Management Act 1994*. These are:

- The Fisheries Management (General) Regulation (1995);
- The Fisheries Management (Aquaculture) Regulation (1995);
- The Fisheries Management (Aquatic Reserves) Regulation (1995);
- The Fisheries Management (General) Amendment (Management Advisory Committees) Regulation (1997);
- The Fisheries Management (General) Amendment (Purse Seine and Lampara Fishing) Regulation (1997);
- The Fisheries Management (General) Amendment (Restricted Fisheries Termination) Regulation (1997); and
- The Fisheries Management Amendment Bill (1997).

The advisory body provisions of the *Fisheries Management Act 1994* have subsequently been amended by the *Fisheries Management Amendment (Advisory Bodies) Act (1996)*. The Standing Committee's Report Number 16 deals with these amendments in detail.

