

FISHERIES MANAGEMENT BILL

Received from the House of Assembly and read a first time.

The Hon. G.E. GAGO (Minister for Environment and Conservation): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill is for improved fisheries legislation to replace the current Fisheries Act which was enacted in 1982, *some 24* years ago. This Bill will provide for the ecologically sustainable development of our fisheries and other living aquatic resources found in

marine and inland waters of South Australia. No longer can we just? is it the fish in terms of our management practices, as it is to be a world-wide approach is to ensure fish stocks are managed sustainably for current and future generations.

Over the past 20 years many countries have borne witness to the collapse of many wild fish stocks. Australia, and South Australia in particular, has an enviable record internationally for the sustainable management of its fish stocks and this has much to do with the governance arrangements implemented through superior legislation. This legislation provides the government with powers to ensure fish harvest strategies for commercial fisheries are sustainable over the longer term and that opportunities for recreational fishers to enjoy reasonable access to fish for personal use and sporting purposes are maintained and enhanced. The Bill builds on the excellent legacy of the current Act and provides an improved governance framework for the future management of our fisheries.

The wild fisheries in South Australia are very important for regional economic development and this support for fisheries management and development will continue under this Bill, so that regional communities continue to benefit.

The objectives of this Bill make it clear that the sustainable management of our fisheries resources is of paramount importance and that it is only within a sustainable management framework that these resources can be developed for the benefit of the community as a whole. The avoidance of over-fishing is set out as the primary principle of the legislation. The Bill also sets out a number of other principles that need to be weighed up when making decisions under the legislation, including the requirement to explicitly allocate access to fish resources between stakeholders and to provide for optimal utilisation and equitable distribution of fish resources between stakeholders. Optimal use of our aquatic resources is very important to economic growth and development of new resources and value adding of existing resources is to be encouraged under this legislation.

The principles also require that commercial, recreational and Aboriginal traditional fishing activities be fostered, and that the aquatic ecosystems on which fisheries rely upon for their productivity, are not endangered or irreversibly damaged.

The great success of wild fisheries management in South Australia has been the science-based and precautionary approach taken to management decisions, through close, transparent formal consultation with industry groups and the broader community utilising the Fishery Management Committees.

This co-management approach will continue under this Bill with the establishment of a new Fisheries Council to provide advice to the Minister on the management of fisheries, whether they are for commercial use, recreational use or for Aboriginal traditional fishing purposes. The Fisheries Council will be expertise-based and will have 9 members appointed by the Governor, plus the Director of Fisheries as an *ex officio* member. This will maintain close links between the Department and the Council. The Council will have a broad advisory role and key responsibility for the development of new fishery management plans. The government has already committed ongoing funding support for the Fisheries Council in the Budget Forward Estimates. This is an important and significant policy decision, as for the first time it recognises and supports the common law principle that fisheries are a common property resource owned by the people of South Australia. Accordingly, this government believes that a proportion of the costs for management of this community resource should be borne by the government on behalf of the community. Additional costs for management of the commercial fisheries will continue to be collected through commercial licence fees under the government's full cost recovery policy.

To assist with its advisory role to government, the Fisheries Council will be required to establish advisory committees and co-opt expertise as necessary to ensure robust advice on fisheries management issues, within a co-management framework. The establishment of these committees will be under the control of the Minister, to ensure that a minimum number and type of committees is established. These committees will ensure the ongoing involvement of stakeholders in fisheries decision-making.

Clause 10 gives the Minister broad delegation powers. These will allow for a conscious move to greater industry control over management in those commercial fisheries where good governance and due diligence arrangements are demonstrable and memorable to ensure these fisheries and associated species and habitats can continue to be sustainably managed by industry groups.

The proposed statutory management plans will establish arrangements for managing recreational and commercial fisheries and the eco-system impacts of those fisheries. The legislation sets out a comprehensive process for developing and approving the plans, ensuring greater levels of involvement from the Community in the preparation of the plans. A key feature of the plans is the requirement to include provisions relating to the allocation of access to aquatic resources and mechanisms for adjusting that access between sectors in the future. They will also provide the framework for granting commercial fishing licences for periods of up to 10 years, providing an improved investment climate for the commercial fishing industry, as currently commercial fishing licences can only be issued for a period of 12 months. Another important feature of the plans will be the inclusion of biological reference points and triggers. This will define what over-exploitation means in relation to a particular fishery and establish rules for maintaining stock levels and responding to stock declines.

Recreational fishing is an important activity in South Australia. It has been estimated that about 320 000 people fish at least once a year in our waters, with the most popular species being King George whiting, snapper and rock lobster. This Bill will maintain the right of everyone in the community to have reasonable access to fish for personal use. New strict possession limits are proposed for recreational anglers. This will involve determining appropriate maximum amounts of fish for a non-commercial fisher to have in his or her possession. This move to possession limits, as already introduced in all of the other States and the Northern Territory, will assist in reducing the level of illegal fishing and illegal sales and provide for our fish resources to be more evenly shared within the recreational sector. Possession limits may also assist in reducing the risk of localised depletion of fish stocks. The actual possession limits will be established by regulation, following a separate community consultation process. The regulations will limit the application of strict possession limits to prescribed circumstances. For example, it is proposed that possession limits will not apply to a person's principal place of residence. Fisheries officers will still need to obtain a warrant to enter residential premises if illegal activity is suspected.

As already mentioned, the Bill provides for a new category of fishing being Aboriginal traditional fishing. This provides for cultural access for a native title group, which has reached a formal agreement with the government through an Indigenous Land Use Agreement under the Commonwealth Native Title Act. The Aboriginal Legal Rights Movement in South Australia, which represents native title interests, commercial fishing industry groups and local governments have endorsed this approach. For the first time, this will provide clear access arrangements to fisheries for Aboriginal people for their cultural community purposes. Commercial fishing opportunities will also be progressed by this government within the current limited entry licensing framework for commercial fisheries. In other words, no new licences will be created but investment opportunities may be provided to buy existing commercial licences on the open market.

Fisheries officers' powers in this Bill remain essentially unchanged. However, there is a new power which provides officers with the ability to search a person suspected of hiding important evidence or material on their person, once suspected by an officer of committing an offence against specified serious offences. This is an important power, as there is an increase in organised criminal activity in the fishing industry and many of these illegal activities occur in distant places or waters. Officers need the ability to search persons for mobile phones, documentation and other material that may provide critical evidence in the investigation of the illegal activity. There are strict controls in the Bill about how a search of a person will be conducted, including requirements for same sex searches and reporting of searches. Clause 80(1)(b) will enable fisheries officers to attach to or implant in aquatic resources identification devices, thereby providing another technique for tracking fish in investigations. This is particularly important in fisheries investigations given the volumes of fish that may be involved or the remoteness of the activity being investigated.

This Bill has greatly increased the penalties for breaches of the fisheries legislation. The last 24 years have seen major increases in value of our major species and therefore the incentive to operate illegally. This Bill addresses the imbalance between the penalties and the impact of illegal activity, both in terms of damage to the fish stock, but also of impact on the economic potential of the industry. Most of the offences in the Bill are summary offences that have a maximum penalty of \$120 000 and/or 2 years imprisonment, but the

Bill also creates a number of new minor indictable offences. These indictable offences pertain to serious criminal and fraud activities related to the sale and purchase of fish taken illegally. A new offence of trafficking of priority species, such as abalone and rock lobster, will allow for organised criminal elements to be effectively dealt with. Illegal proceeds from the sale of fish will be traced with the potential for their confiscation on successful prosecution.

The Bill will provide for a new system of demerit points for all persons who expiate or are found guilty of offences. Demerit points will be applied automatically under the legislation, with consequences for accruing 200 points in a 5 year period. A person or company (and its directors) will be liable to be disqualified from holding any authority for a period of 10 years. Furthermore, if a person or company holds a transferable authority (a commercial licence), the licence will have to be transferred to a non-related third party within 6 months or the Minister may compulsorily acquire the authority. The deterrence value of the demerit points system will come through setting the points that will apply to various offences. This will be done by regulation and in consultation with industry and the community. An important aspect in introducing a demerit point system is that it will replace the current power to cancel a transferable authority. This will give recognition to the value of commercial fishing licences, by removing the discretion currently associated with that type of decision. Therefore, a licence will not be able to be cancelled except in accordance with the demerit points scheme.

The Bill includes a number of types of court orders that may be used in addition to traditional types of penalties. The provisions are intended to provide guidance to the courts, highlight the severity of fisheries offences and promote consistency in sentencing for fisheries crime. One of the types of orders may be to exclude a person from being in, on or near specified waters with fishing gear. The courts have already used these orders on an ad hoc basis for restricting the activity of fish thieves involved in serious abalone theft and this explicit power is to formalise use of this tool for dealing with serious and repetitive fisheries crime.

Biosecurity of our marine and freshwater environments is very important to support sustainable fisheries and aquaculture production. Introduced species of noxious fish present a significant risk to the future of these valuable industries and the Bill provides new powers to deal with the illegal introduction, sale, purchase and possession of noxious species. The effective control of exotic aquatic species will be required under national agreements through the Natural Resource Management Ministerial Council and the provisions in this Bill will allow for appropriate licensing, monitoring and response to exotic pests to occur.

The Bill also provides many other useful fisheries management tools, including the constitution of aquatic reserves for fisheries management purposes, which should not be confused with marine protected areas that will be established for biodiversity conservation under other legislation. Aquatic reserves may be used for purposes such as protecting fish nursery areas, fish spawning grounds, and establishing marine research zones or recreational fishing areas. There are 15 aquatic reserves established under the current Fisheries Act and these reserves will continue in existence under the new legislation.

Another feature of the legislation is the introduction of protection and repair orders, which may be used to ensure compliance with fisheries management arrangements.

Fisheries research, fisheries development opportunities and other investigations will be facilitated through a new permit system that may be established by regulation under the Bill. Currently there is no effective mechanism to allow for short term access to fish resources, other than issuing exemptions under section 59 of the current Act. Permits will provide greater support of these initiatives in the future.

This Bill has been through a long development and consultation process over the past 5 years and the community and industry groups have been thoroughly engaged in the development of the legislation. The legislation is innovative and dynamic, with a balance between the required regulatory role of government to ensure aquatic resources are managed at sustainable levels for current and future generations, whilst allowing for a move to greater control over management in those commercial and cultural fisheries where the maturity of an industry or community group warrants this level of delegation. This Bill will provide for continued ecologically sustainable development of the fisheries of South Australia.

I commend the Bill to the House.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

Subclause (1) defines terms used in the measure.

Aquatic resource is defined to mean fish or aquatic plant or animal. **Fish** is defined as an aquatic animal other than an aquatic bird, aquatic mammal, reptile or amphibian or an aquatic animal of a kind excluded from the definition by the regulations. **Aquatic animal** means an aquatic animal of any species, and includes the reproductive products and parts of an aquatic animal, and an **aquatic plant** is an aquatic plant of any species, and includes the reproductive product and parts of an aquatic plant.

In Part 1, **fishery** means a class of fishing activities identified in an arrangement under that Part as a fishery to which the arrangement applies.

In other Parts of the measure, **fishery** means a class of fishing activities declared by the regulations to constitute a fishery and **fishing activity** or **fishing** is defined to mean the act of taking an aquatic resource, or an act preparatory to or involved in, the taking of an aquatic resource. **Take**, in relation to an aquatic resource, means catch, take or obtain the resource (whether dead or alive) from any waters or kill or destroy the resource in any waters.

Waters means any sea or inland waters (including any body of water or watercourse of any kind whether occurring naturally or artificially created and the bed of such water) and a reference to waters includes a reference to the intertidal and supra tidal zones of waters.

Subclause (2) provides that a class of fishing activities may be defined by regulation or other statutory instrument by reference to one or more factors such as a species of aquatic resource, the sex, size or weight of an aquatic resource, a number or quantity of exotic resource, a period of time, an area of waters or a place, a method of fishing, a class or number of boats, a class of persons or a purpose of activity.

Subclause (3) provides that a reference to **engaging in a fishing activity of a class** is to be construed as a reference to doing an act that falls within the defined class and including a reference to acts such as using a device or boat for the purpose of the activity, being in charge of, or acting as a member of the crew of, a boat that is being used for the purpose of the activity or diving in waters for the purpose of the activity.

Commercial fishing is defined to mean fishing for a commercial purpose (ie the purpose of trade or business), and **recreational fishing** is defined as fishing other than commercial fishing or aboriginal traditional fishing. **Aboriginal traditional fishing** is defined to mean fishing engaged in by an Aboriginal person for the purposes of satisfying personal, domestic or non-commercial, communal needs, including ceremonial, spiritual and educational needs, and using fish and other natural marine and freshwater products according to relevant aboriginal custom.

Subclause (4) provides that for the purposes of the measure an aquatic resource will not be regarded as having been taken if it is taken but immediately returned to the water unencumbered in any way and with as little injury or damage as possible.

4—Declaration of aquatic reserves

This clause provides for the creation of aquatic reserves by proclamation. An aquatic reserve can comprise waters, land and waters, but only land placed under the care, control and management of the Minister can form part of an aquatic reserve.

5—Application of Act

This clause provides that the measure is to apply—

- in relation to all waters within the limits or territorial State; and
- except for purposes relating to a fishery to be managed in accordance with Commonwealth law under a Commonwealth-State arrangement or for purposes relating to certain recreational fishing activities in relation to any waters of the sea not within the territorial State on the landward side of waters adjacent to the State that are within the Australian fishing zone; and

for purposes relating to a fishery to be managed in accordance with the law of the State under

Commonwealth State arrangement—in relation to any waters to which the legislative power of the State extend, with respect to that fishery; and

- for purposes relating to recreational fishing activities engaged in otherwise than by use of a foreign boat (other than such activities prohibited or regulated under a plan of management under the Commonwealth Fisheries Management Act)—in relation to any waters to which the legislative power of the State extend with respect to such activities.

The clause also provides that the measure does not apply in relation to an activity (other than the taking of aquatic resources for a commercial purpose or the introduction of exotic aquatic organisms or disease in aquatic resources) engaged in relation to inland waters if those waters are surrounded by land in the ownership, possession or control of the same person (being a person other than the Crown or an instrumentality of the Crown).

6—Ownership of aquatic resources of State

This clause provides that the Crown in right of the State owns all aquatic resources of the State (whether living or dead).

Property in the aquatic resources of the State passes—

- to the holder of an authority granted under this measure when taken in accordance with that authority; or
- to any other person when taken lawfully in circumstances in which no authority is required under this measure for the taking.

Part 2—Objects of Act

7—Objects of Act

This clause provides that an object of this measure is to protect, manage, use and develop the aquatic resources of the State in a manner that is consistent with ecologically sustainable development, and to that end, the following principles apply:

- proper conservation and management measures are to be implemented to protect the aquatic resources of the State from over-exploitation and ensure that those resources are not endangered;
- access to the aquatic resources of the State is to be allocated between users of the resources in a manner that achieves the optimum utilisation of those resources to the benefit of the community;
- aquatic habitats are to be protected and conserved, and aquatic ecosystems and genetic diversity are to be maintained and enhanced;
- recreational fishing and commercial fishing activities are to be fostered for the benefit of the whole community;
- the participation of users of the aquatic resources of the State, and of the community more generally, in the management of fisheries is to be encouraged.

Principle (a) has priority over the other principles.

The clause provides that a further object of this measure is that aquatic resources are to be managed in an efficient and cost effective manner and targets set for the recovery of management costs.

The Minister, Director of Fisheries, Fisheries Council, Environment, Resources and Development Court and other persons or bodies involved in the administration of this measure, and any other person or body required to consider the operation or application of this measure (whether acting under this measure or another Act), is required to act consistently with, and seek to further, the objects of this measure. In so far as the measure applies to the Adelaide Dolphin Sanctuary, these persons and bodies must seek to further the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*, and insofar as the measure applies to the River Murray, they must seek to further the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act.

Part 3—Administration

Division 1—Minister and Director

8—Minister

This clause provides that the Minister has the functions and powers assigned or conferred by or under this measure.

9—Director

This clause continues in existence the office of the Director of Fisheries.

10—Delegation

This clause empowers the Minister and the Director to delegate functions or powers under this measure.

Division 2—Fisheries Council of South Australia

11—Establishment of Council

This clause establishes the Fisheries Council of South Australia. The Council is to consist of at least 10 members, of whom 9 will be appointed by the Governor on the nomination of the Minister. The Director of Fisheries will be a member *ex officio*. All members must have expertise in fisheries management and at least 1 must have knowledge and experience of aboriginal traditional fishing.

12—Presiding member and deputy presiding member

This clause requires the Minister to appoint a presiding member and a deputy presiding member.

13—Terms and conditions of membership

This provides for the appointment of members of the Council on conditions determined by the Governor for a term not exceeding 3 years. A member can only hold office for a maximum of 2 consecutive 3 year terms.

14—Vacancies or defects in appointment of members

This clause provides that an act or proceeding of the Council is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

15—Remuneration

This clause entitles a member of the Council to remuneration, allowances and expenses determined by the Governor.

16—Functions of Council

This clause sets out the functions of the Council.

17—Council's procedures

This clause deals with the Council's procedures at meetings.

18—Annual strategic plan

This clause requires the Council to prepare an annual strategic plan and submit it to the Minister.

19—Annual report

This clause requires the Council to prepare an annual report on its operations and submit it to the Minister. The Minister is required to table the report in both Houses of Parliament.

Division 3—Advisory committees

20—Establishment of committees

This clause empowers the Minister and the Fisheries Council to establish advisory committees.

Division 4—Fisheries Research and Development Fund

21—Continuation of Fund

This clause continues the Fisheries Research and Development Fund in existence, specifies sources of money for the Fund and authorises its application by the Minister for certain specified purposes.

22—Accounts

This clause requires the Minister to cause proper accounts to be kept in relation to the Fund.

23—Audit

This clause requires the Auditor-General to audit the accounts of the Fund at least once a year and empowers him or her to audit the accounts at any time.

Part 4—Commonwealth-State arrangements

Division 1—Commonwealth-State joint authorities

24—Powers and functions of Minister

This clause provides that the Minister may exercise a power conferred on the Minister by Part 5 of the *Commonwealth Fisheries Management Act*.

25—Judicial notice

This clause requires judicial notice to be taken of the signatures of members of a Joint Authority and their deputies.

26—Functions of Joint Authority

This clause provides that a Joint Authority has such functions in relation to a fishery in respect of which an arrangement is in force under Division 2 as are conferred on it by the law in accordance with which the fishery is to be managed.

27—Delegation

This clause empowers a Joint Authority to delegate powers under this measure.

28—Procedure of Joint Authorities

This clause provides that certain sections of the Commonwealth Act apply in relation to the performance by a Joint Authority of its functions under this measure.

29—Report of Joint Authority

This clause requires the Minister to table in both Houses of Parliament a copy of the annual report prepared by a Joint Authority under the Commonwealth Act.

Division 2—Arrangements with Commonwealth with respect to management of particular fisheries

30—Arrangement for management of certain fisheries

This clause provides that the State may, in accordance with the Commonwealth Act, enter into an arrangement for the management of a fishery. It also provides for the termination of an arrangement and the preliminary action that is required to bring an arrangement into effect or terminate an arrangement.

31—Application of this Act to fisheries in accordance with arrangements

This clause provides that if there is an arrangement for a fishery to be managed in accordance with the law of the State, the provisions of this measure apply in relation to the fishery.

32—Application of Commonwealth law to limits of State in accordance with arrangements

This clause provides that if there is an arrangement for a fishery to be managed in accordance with the law of the Commonwealth, that law applies to the limits of this State as a law of the State.

33—Functions of Joint Authority

This clause sets out the functions of a Joint Authority that is to manage a fishery in accordance with the law of the State.

34—Joint Authority to exercise certain powers instead of Minister or Director

This clause provides that certain powers under this measure conferred on the Minister or Director in respect of a fishery to be managed under the law of the State by a Joint Authority are exercisable by the Joint Authority to the exclusion of the Minister or Director.

35—Application of certain provisions relating to offences

This clause applies references made to an authority in a provision creating an offence under this measure to any such authority issued or renewed by a relevant Joint Authority.

36—Presumption relating to certain statements

This clause is an evidentiary provision that facilitates proof of the waters to which an arrangement applies.

37—Regulations relating to Joint Authority fishery

This clause empowers the Governor to make regulations in relation to a fishery to be managed by a Joint Authority in accordance with a law of the State.

Division 3—Arrangements with other States

38—Arrangements with other States

This clause empowers the Minister to enter into agreements with the Minister administering a corresponding law, or with an authority of another State or Territory concerned in the administration of that law, for the purpose of co-operation in furthering the objects of this measure (whether in this State or in that other State or Territory).

39—Functions

This clause provides that for the purposes of this Division, the Minister may perform any function and exercise any power conferred on the Minister under Division 1 or 2 as if the Commonwealth Act applied under this Division.

Part 5—Management plans for commercial fishing, recreational fishing and aquatic reserves

40—Interpretation

This clause includes interpretation provisions required for this Part.

41—Application of Part

This clause provides that this Part does not apply to an aboriginal traditional fishing management plan.

42—Duty of Council to prepare management plans

This clause requires the Council to prepare management plans if required by the Minister. Management plans may relate to classes of commercial or recreational fishing activities or to aquatic reserves.

43—General nature and content of management plans

This clause sets out the matters which a management plan must address.

44—Procedure for preparing management plans

This clause sets out the procedures that apply to the preparation of management plans, including the public consultation processes required.

45—Tabling of management plans

This clause requires management plans adopted by the Minister to be tabled in both Houses of Parliament.

46—Procedure for making certain amendments to management plans

This clause specifies the types of amendments to a management plan that may be made by the Minister by notice in the Gazette. These include the correction of errors, changes in form not involving changes of substance, changes that do substantially alter the plan, and changes authorised by regulations or the plan itself.

47—Duration of management plans

This clause provides that a management plan for a development fishery expires on the third anniversary of its commencement, or on the expiry date specified in the plan, whichever is the earlier. Any other management plan expires on the tenth anniversary of its commencement, or on the expiry date specified in the plan, whichever is the earlier.

48—Availability and evidence of management plans

This clause requires copies of management plans to be available for inspection and purchase by the public during ordinary office hours.

49—Review of management plans

This clause requires the Council to conduct comprehensive reviews of management plans at least once every 5 years, and empowers the Council to conduct reviews at any time. The Council must submit a report on the outcome of a review to the Minister and the Minister must table the report in both Houses of Parliament.

50—Implementation of management plans

This clause requires the Minister to manage commercial and recreational fishing activities and aquatic reserves in accordance with any relevant management plan adopted by the Minister.

Part 6—Regulation of fishing and processing

Division 1—Commercial fishing

51—Interpretation

This clause defines terms used in the Part.

52—Obligation of commercial fishers to hold licence or permit

This clause makes it an offence for a person to engage in commercial fishing unless the person holds a licence or permit or is acting as the agent of a licence or permit holder. The maximum penalty for an offence related to fish of a priority species is \$500 000 if the offender is a body corporate, or \$250 000 or imprisonment for 4 years if the offender is a natural person. In any other case, the maximum penalty is \$100 000 if the offender is a body corporate, or \$50 000 or imprisonment for 2 years if the offender is a natural person.

53—Obligation for boats and devices used in commercial fishing to be registered

This clause makes it an offence to use a boat for the purpose of commercial fishing, or cause, suffer or permit a boat to be used for such purpose, unless—

- the boat is registered or is being used in place of a registered boat with the consent of the Minister; and
- the boat is in the charge of a natural person registered as the master of a boat that may be so used or is acting in place of a registered master with the consent of the Minister.

The clause also makes it an offence for a person to use a device for the purpose of commercial fishing, or cause, suffer or permit a device to be used for such a purpose, unless the device is registered for use under a licence or permit held by the person or a person for whom he or she is acting as an agent.

Each offence is punishable by a maximum fine of \$250 000 if the offender is a body corporate or \$50 000 if the offender is a natural person.

54—Applications for licences, permits or registration

This clause specifies the form and manner in which an application for a licence, permit or registration must be made. It provides that a licence or permit granted to a natural person will include a photograph of the holder, and empowers the Minister to refuse an application if the applicant fails to meet the Minister's requirements. In such a case the Minister may keep the fee that accompanied the application. The clause also specifies other grounds on which the Minister may refuse an application, and requires the Minister to consult with the Minister for the River Murray before determining conditions relating to, or applying in respect of, the River Murray.

55—Conditions of licence, permit or registration

This clause empowers the Minister to impose conditions on fishing licences, permits and registrations. It is an offence

the holder of an authority to contravene a condition of an authority. If the condition relates to the holder's quota entitlement under the authority the maximum penalty is \$20 000. In other cases it is \$10 000.

56—Duration of authority and periodic fee and return etc
This clause specifies the duration of a fishery authority. The maximum term of a licence is 10 years. The maximum term of a permit is 3 years.

The clause requires the holder of an authority to pay an annual fee, and lodge periodic returns in accordance with the regulations. The Minister may require the holder of an authority to pay a penalty for default in payment of an annual fee, and if the person fails to pay the fee, or the penalty for default of payment, or fails to lodge a return as required, the Minister may suspend the authority until the person complies.

57—Transfer of licence or permit

This clause provides that a fishery licence or permit is not transferable unless the regulations for the fishery provides that the licence or permit may be transferred.

If the holder of a transferable licence or permit dies, the licence or permit vests in the personal representative of the deceased as part of the estate but cannot be transferred in the course of the administration of the estate except with the Minister's consent.

If the licence or permit is not transferred within 2 years after the death of the holder of the licence or permit, or such further period as the Minister may approve, the licence or permit is suspended pending transfer.

58—Obligation to carry authority and identification while engaging in fishing activities

This clause requires the holder of a fishery licence or permit who is a natural person to carry the licence or permit and identification in the form issued by the Minister, at all times when engaging in fishing activity pursuant to the licence or permit.

If a registered boat is being used on waters for any purpose, the person in charge of the boat must carry with him or her the licence or permit under the boat may be used to take aquatic resources and identification in the form issued by the Minister.

If a registered device is being used on waters for any purpose but not on or from a boat, the person using the device must carry with him or her the licence or permit under which the device may be used and identification in the form issued by the Minister. If the device is being used on or from a boat, the person in charge of the boat is required to carry the licence or permit and identification.

The maximum penalty for non-compliance is \$2 500.

Division 2—Aboriginal traditional fishing

59—Management of aboriginal traditional fishing

This clause enables the Minister and a native title group that is party to an indigenous land use agreement to make an aboriginal traditional fishing management plan under the agreement for the management of specified aboriginal traditional fishing activities in a specified area of waters.

60—Availability and evidence of aboriginal traditional fishing management plans

This clause requires aboriginal traditional fishing management plans to be available for inspection and purchase by members of the public.

Division 3—Processing

61—Obligation of fish processors to be registered

This clause makes it an offence for a person to act as a fish processor unless he or she is registered as a fish processor. However, registration is not required if the person only processes aquatic resources obtained from a registered fish processor or is the holder of a fishery authority or aquaculture licence and only processes aquatic resources taken or farmed under the authority or licence for sale to a registered fish processor or directly to consumers. Also, a person need not be registered if he or she belongs to a prescribed class of persons.

The term *fish processor* is defined in clause 3 to mean a person who for the purpose of trade or business processes, stores, transports or deals with fish or other aquatic resources.

Processing, in relation to fish, means scaling, gilling, gutting, filleting, freezing, chilling, packing or any other activity involved in preparing fish for sale. In relation to any other

aquatic resource, processing means any activity involved in preparing the resource for sale.

It is also an offence for a registered fish processor to use any premises, place, boat or vehicle for or in connection with processing, storing or dealing with aquatic resources unless the premises, place, boat or vehicle is specified in the certificate of registration. For offences against this clause the maximum penalty is \$50 000 if the offender is a body corporate or \$10 000 if the offender is a natural person.

62—Classes of registration

This clause creates 2 classes of fish processor registration, being restricted registration subject to a condition limiting the kind of activities authorised by the registration, and registration authorising a person to do any act involved in processing.

63—Applications for registration

This clause specifies the manner and form an application for fish processors registration must be made and empowers the Minister to refuse an application in certain cases.

64—Conditions of registration

This clause provides that it is a condition of registration as a fish processor that the processor will only process aquatic resources of a class specified in the registration. The registration may be subject to other conditions imposed by the Minister limiting the processing that may be carried out under the authority of the registration.

65—Duration of registration and periodic fee and return etc

This clause specifies the duration of fish processors registration. The maximum term of registration is 3 years.

The clause requires a registered fish processor to pay an annual fee, and lodge periodic returns in accordance with the regulations. The Minister may require a registered fish processor to pay a penalty for default in payment of an annual fee, and if the person fails to pay the fee, or the penalty for default of payment, or fails to lodge a return as required, the Minister may suspend the registration until the person complies.

Division 4—Miscellaneous

66—Misuse of authorities

This clause makes it an offence to misuse an authority by giving another person possession or control of an authority that is not in the name of that person, by having possession or control of an authority not in the person's name, or by falsely representing that the person is the person named in an authority. The maximum penalty is \$5 000.

67—Issue of duplicate authority

This clause empowers the Minister to issue duplicate authorities.

68—Effect of suspension of authority

This clause provides that an authority has no force or effect while it is suspended.

Part 7—Offences

Division 1—Offences relating to fishing activities

69—Prescribed fishing activities prohibited

This clause makes it an offence to engage in a fishing activity of a prescribed class. The maximum penalty if the fishing activity involves fish of a priority species is \$10 000 for a first offence, \$20 000 for a second offence and \$35 000 for a third or subsequent offence. In any other case the maximum penalty is \$5 000 for a first offence, \$10 000 for a second offence and \$20 000 for a third or subsequent offence.

70—Taking, injuring etc aquatic mammals and protected species prohibited

This clause makes it an offence to take an aquatic mammal or aquatic resource of a protected species or injure, damage or otherwise harm an aquatic mammal or aquatic resource of a protected species. It is also an offence to interfere with, harass or molest an aquatic mammal or aquatic resource of a protected species, or cause or permit interference with, harassment or molestation of an aquatic mammal or aquatic resource of a protected species.

If the offence involves an aquatic mammal, the maximum penalty is \$250 000 if the offender is a body corporate or \$100 000 if the offender is a natural person.

If the offence does not involve an aquatic mammal the maximum penalty for a first offence is \$50 000 if the offender is a body corporate or \$10 000 if the offender is a natural person. For a second or subsequent offence the maximum fine is \$100 000 if the offender is a body corporate or

\$20 000 if the offender is a natural person. An offence not involving an aquatic mammal is expiable. The expiation fee is \$500.

71—Sale, purchase or possession of aquatic resources without authority prohibited

This clause makes it an offence to sell or purchase aquatic resources taken without an authority. It is also an offence to sell or purchase, or have possession or control of an aquatic resource taken in contravention of this measure or a corresponding law, an aquatic resource of a protected species or an aquatic resource of a prescribed class.

The maximum penalty for an offence involving fish of a priority species is \$250 000 if the offender is a body corporate or \$50 000 or imprisonment for 4 years if the offender is a natural person. In any other case the maximum penalty is \$100 000 if the offender is a body corporate or \$20 000 if the offender is a natural person.

It is a defence if the defendant proves that the aquatic resources were purchased from a person whose ordinary business was the selling of such aquatic resources and were purchased in the ordinary course of that business. It is also a defence if the defendant proves that the defendant did not take the aquatic resources in contravention of this measure or a corresponding law and did not know, and had no reason to believe that the aquatic resources were (as the case may be) taken not under an authority, or taken in contravention of this measure or a corresponding law, or were aquatic resources of a protected species or aquatic resources of a prescribed class.

In proceedings for an offence, if it is proved that a person had a commercial quantity of an aquatic resource of any species in his or her possession or control, it will be presumed, in the absence of proof to the contrary, that the person had that aquatic resource in his or her possession or control for the purposes of sale.

If it is proved that a person had a commercial quantity of an aquatic resource of any species in his or her possession or control in circumstances in which it is reasonable to presume that the aquatic resources were taken by that person in waters to which this measure applies, it will be presumed, in the absence of proof to the contrary, that the person took the aquatic resources from such waters.

72—Possession of prescribed quantity of aquatic resource in prescribed circumstances

This clause makes it an offence to have possession, in prescribed circumstances, of a quantity of aquatic resource exceeding the quantity fixed by the regulations. The maximum penalty for an offence involving fish of a priority species is \$10 000 for a first offence, \$20 000 for a second offence and \$35 000 for a third or subsequent offence. In any other case the maximum penalty is \$5 000 for a first offence, \$10 000 for a second offence and \$20 000 for a third or subsequent offence.

It is a defence if the defendant proves that the aquatic resource was taken for a commercial purpose under an authority or was kept under an aquaculture licence or the person has a prescribed defence.

73—Unauthorised trafficking in fish of priority species prohibited

This clause makes it an offence to traffic in a commercial quantity of fish of a priority species, or have possession or control of a commercial quantity of such fish, unless authorised to do so under this measure. The maximum penalty is \$500 000 if the offender is a body corporate or \$100 000 or imprisonment for 4 years if the offender is a natural person.

74—Interference with lawful fishing activities prohibited

This clause makes it an offence to obstruct or interfere with a lawful fishing activity, or interfere with aquatic resources taken in the course of a lawful fishing activity, without reasonable excuse. The maximum penalty is \$5 000.

If a person is obstructing or interfering with a lawful fishing activity in contravention of this provision, the person must, at the request of a person engaged in the lawful fishing activity, cease or discontinue the obstructive conduct or interference or remove the obstruction. The maximum penalty for failure to do so is \$5 000.

In addition, the court by which a person is found guilty of an offence against this clause may, whether or not a penalty is imposed, order the defendant to pay to a person affected by

the commission of the offence such compensation as the court considers proper for loss or damage suffered by that person as a result of the commission of the offence.

Division 2—Miscellaneous offences

75—Entering etc aquatic reserve, or engaging in lishin activity in aquatic reserve, without authorisation prohibited

This clause makes it an offence to enter or remain an aquatic reserve, or engage in a fishing activity in an aquatic reserve except as authorised by the regulations, a management plan or a permit issued by the Minister. The maximum penalty is \$5 000 for a first offence, \$10 000 for a second offence and \$20 000 for a third or subsequent offence.

76—Disturbance of water beds, or removal or interference with animals or plants, in aquatic reserve without authorisation prohibited

This clause makes it an offence to engage in an activity involving or resulting in disturbance of the bed of any water of an aquatic reserve or removal of or interference with aquatic or benthic animals or plants of any waters in an aquatic reserve, except as authorised by the regulations, a management plan or a permit issued by the Minister. The maximum penalty is \$5 000 for a first offence, \$10 000 for a second offence and \$20 000 for a third or subsequent offence.

77—Unauthorised activities relating to exotic organism's or noxious species prohibited

This clause makes it an offence to bring, or cause to be brought, into the State, or sell, purchase, deliver, or have possession or control of, aquatic resources of a noxious species, except as authorised by a permit issued by the Minister.

It is also an offence to release or permit the escape of exotic fish, aquaculture fish or fish that have been kept apart from their natural habitat, into any waters, or to deposit in any waters such fish or exotic aquatic plants, except as authorised by a permit issued by the Minister.

The maximum penalty for an offence is \$250 000 if the offender is a body corporate or \$120 000 if the offender is a natural person.

Exotic aquatic organism is defined to mean fish or an aquatic plant of a species that is not endemic to the waters to which this measure applies. *Noxious*, in relation to an aquatic resource, means a species of aquatic resource declared by the Minister by notice in the Gazette to be a noxious species for the purposes of this measure.

The Minister must, before making a decision on an application for a permit that relates to, or is to apply in respect of, the Adelaide Dolphin Sanctuary, consult with the Minister for the Adelaide Dolphin Sanctuary. Before making a decision on an application for a permit that relates to, or is to apply in respect of, the River Murray, the Minister must consult with the Minister for the River Murray.

Division 3—Temporary prohibition of certain fishing activities etc

78—Temporary prohibition of certain fishing activities

This clause empowers the Minister make a declaration by notice in the Gazette that it is unlawful for a person—

- to engage in a fishing activity of a specified class during a specified period;
- to have possession or control of aquatic resources of a specified kind during a specified period.

A declaration remains in force for a period, not exceeding months, specified in the declaration and may be renewed for a further period not exceeding 12 months.

The Minister must, on the request of the Minister for the Adelaide Dolphin Sanctuary, make a declaration, or vary or revoke a declaration, in relation to a fishing activity undertaken in respect of the Adelaide Dolphin Sanctuary. On the request of the Minister for the River Murray, the Minister must make a declaration, or vary or revoke a declaration, in relation to a fishing activity undertaken in respect of the River Murray.

If, in the opinion of the Minister, it is necessary to take action to safeguard public health or protect the resources of the State, the Minister, or a fisheries officer authorised by the Minister, may direct a person or persons

a specified class to not engage in a fishing activity of a specified class during a specified period.

It is an offence for a person to engage in a fishing activity in contravention of a declaration or direction under this clause. The maximum penalty is \$5 000 for a first offence, \$10 000 for a second offence and \$20 000 for a third or subsequent offence.

Part 8—Enforcement

Division 1—Authorised persons

Subdivision 1—Appointment of authorised persons

79—Appointment of fisheries officers, scientific observers and sea rangers

This clause empowers the Minister to appoint suitable persons to be fisheries officers, sea rangers or scientific observers. A fisheries officer is not eligible for appointment as a scientific observer.

Subdivision 2—Fisheries officers

80—General powers of fisheries officers

This clause sets out the powers of fisheries officers that may be exercised as reasonably required for the administration and enforcement of the measure.

The powers to enter and search premises can only be exercised on the authority of a warrant issued by a magistrate or justice. However, a warrant is not required for non-residential premises if they are used by a fish processor for, or in connection with, processing, storing or dealing with aquatic resources, or if the fisheries officer has reason to believe that urgent action is required in the circumstances.

81—Power of fisheries officer to search persons for evidence of certain offences

This clause empowers a fisheries officer to search a person if he or she reasonably suspects the person has on or about his or her body evidence of a prescribed offence. The search must be conducted by a person of the same sex as the person being searched unless it is not reasonable or practicable to do so in the circumstances of the search. The fisheries officer who conducts the search must make a written record of the search setting out certain details relating to the search.

82—Powers of fisheries officers relating to exotic organisms and aquaculture fish

This clause empowers the Minister to authorise a fisheries officer to take whatever action is necessary or desirable in the Minister's opinion to—

- (a) search for and destroy exotic organisms or aquaculture fish;
- (b) and limit the consequences of the presence of the exotic organisms or aquaculture fish,

despite the fact that the action may constitute a trespass or cause loss or damage to property.

If a fisheries officer reasonably suspects that an offence has been committed in relation to an exotic organism or aquaculture fish, the fisheries officer may—

- (a) search for and destroy the exotic organism or aquaculture fish and, for that purpose, may take whatever action is, in the opinion of the Minister, necessary or desirable; and
- (b) take whatever action is, in the opinion of the Minister, necessary or desirable to limit the consequences of the offence or to ameliorate the damage caused by the offence,

despite the fact that the action may constitute a trespass or cause loss or damage to property.

83—Power of fisheries officer to arrest persons without warrant

This clause empowers a fisheries officer to arrest a person without warrant if—

- (a) the person hinders or assaults an authorised person, a person accompanying or assisting a fisheries officer or any other person engaged in the administration or execution of this measure; or
- (b) the fisheries officer reasonably suspects that the person has committed an offence against this measure or a corresponding law and—
 - (i) when required to do so under clause 80—
 - (A) the person failed to state truthfully his or her name or usual place of residence; or
 - (B) the person failed to produce true evidence of his or her identity; or

(ii) the fisheries officer has reasonable grounds for believing that the person would, if not arrested—

- (A) fail to attend court in answer to a summons issued in respect of the offence; or
- (B) continue the offence or repeat the offence; or
- (C) alter, destroy, conceal or fabricate evidence relating to the offence; or
- (D) intimidate, harass, threaten or interfere with a person who may provide or produce evidence of the offence.

A fisheries officer must, on arresting a person, immediately convey the person, or cause the person to be conveyed, to the nearest police station.

It is an offence for a person to resist arrest or, having been arrested, escape from lawful custody. The maximum penalty is \$10 000 or imprisonment for 2 years.

84—Corresponding laws may confer powers and functions

This clause provides that a corresponding law may confer powers or functions on fisheries officers.

85—Fisheries officer may be assisted in exercise of powers etc

This clause provides that a fisheries officer may, while acting in the exercise of powers or discharge of duties under this measure, be accompanied by any person and, if he or she reasonably believes that it is necessary in the circumstances, request a suitable person to assist him or her in the exercise or discharge of those powers or duties. A person, while assisting a fisheries officer in response to a request for assistance, has and may exercise all such powers of a fisheries officer as are reasonably necessary for the purpose. A fisheries officer may, if he or she believes that it is necessary for the purpose of enforcing the provisions of this measure, request the person in charge of a boat or vehicle to make the boat or vehicle available for his or her use. If a fisheries officer makes such use of a boat or vehicle, the Minister may pay to the person who would otherwise have been entitled to the use of the boat or vehicle at that time such compensation as the Minister considers proper for any loss incurred as a result of the boat or vehicle being made available for use by the fisheries officer.

Subdivision 3—Scientific observers

86—Functions of scientific observer

This clause provides that a scientific observer has such functions as may be assigned to the scientific observer by the Minister. These are:

- to collect data about a fishery, fish habitat or aquatic resource;
- to conduct scientific research in relation to a fishery, fish habitat or aquatic resource.

87—Placement of scientific observer on registered boat

This clause requires the Minister to give the holder of a fishery authority written notice of the Minister's intention to place a scientific observer on a registered boat used under the fishery authority.

A registered boat to which the notice relates must not, during the period specified in the notice, be used under a fishery authority unless a scientific observer is aboard the boat at all times while it is being so used. If this prohibition is contravened, the registered owner of the boat and the registered master of the boat are each guilty of an offence. The maximum penalty is \$20 000.

Subdivision 4—Sea rangers

88—Functions, of sea ranger

This clause provides that a sea ranger has such functions as may be assigned to the sea ranger by the Minister.

Subdivision 5—Miscellaneous

89—Provisions relating to things seized

This clause provides that if a thing is seized under this Part it must be held pending proceedings for an offence related to the thing seized, unless the Minister authorises its release or orders that it be forfeited to the Crown.

If the defendant is found guilty of the offence, the court must consider the question of forfeiture and has a power to order that the thing be forfeited to the Crown. If the thing has already been forfeited by order of the Minister, the court must either confirm or quash the forfeiture order.

If proceedings are not commenced within a certain time, or the defendant is found not guilty of the offence, or the

defendant is found guilty but no order for forfeiture is made, the person from whom the thing was seized or a person who had legal title to the thing at the time of its seizure is entitled to compensation.

If a perishable item is seized in relation to an expiable offence and the offence is expiated, the thing is forfeited to the Crown and no compensation can be recovered in respect of it. If the thing is forfeited to the Crown, it may be disposed of by sale, destruction or in some other way directed by the Minister.

If a fisheries officer finds a fishing device unattended and seizes the device and fish caught or trapped by the device, and the owner of the device is unknown, the Minister can order that the fish be forfeited to the Crown, notice must be given of the seizure, and, after a certain time, if the owner remains unknown and the Minister determines there is reason to believe that the device was used, or was intended to be used, in contravention of this measure, the Minister can order the device to be forfeited to the Crown and disposed of. Proceeds of forfeited items sold must be paid into the Fisheries Research and Development Fund.

90—Offence to hinder etc authorised persons

This clause makes it an offence to hinder or use abusive, threatening or insulting language to a person engaged in the administration of this measure, to fail to comply with requirements made by authorised persons under this measure, or to falsely represent that a person is an authorised person. The maximum penalty is \$5 000. It is also an offence to assault a person engaged in the administration of this measure. The maximum penalty is \$10 000 or imprisonment for 2 years.

Division 2—Orders made by Minister

91—Protection orders

This clause empowers the Minister to issue a protection order to secure compliance with this measure. A fisheries officer can issue an emergency protection order if of the opinion that urgent action is required to protect a fish habitat. A person to whom a protection order is issued must comply with the order. The maximum penalty for a failure to comply is \$10 000.

92—Action on non-compliance with protection order

This clause empowers the Minister to take any action required by a protection order that is not complied with. Action may be taken on the Minister's behalf by a fisheries officer or other person authorised by the Minister. The reasonable costs and expenses in doing so can be recovered by the Minister from the person who failed to comply with the order, and if the amount is unpaid, the Minister can impose interest on the amount unpaid. The amount unpaid, together with interest, is a charge in favour of the Minister on any land owned by the person.

93—Reparation orders

This clause empowers the Minister to issue a reparation order if satisfied a person has caused harm to a fish habitat by a contravention of this measure. The order may require the person to take specified action to remedy the damage and to pay money into an approved account to enable action to be taken to address the damage.

A fisheries officer can issue an emergency reparation order requiring a person to take specified action if of the opinion that urgent action is required to prevent or mitigate further harm.

A person to whom a reparation order is issued must comply with the order. The maximum penalty for failure to comply is \$5 000.

94—Action on non-compliance with reparation order

This clause empowers the Minister to take any action required by a reparation order that is not complied with. Action may be taken on the Minister's behalf by a fisheries officer or other person authorised by the Minister. The reasonable costs and expenses in doing so can be recovered by the Minister from the person who failed to comply with the order, and if the amount is unpaid, the Minister can impose interest on the amount unpaid. The amount unpaid, together with interest, is a charge in favour of the Minister on any land owned by the person.

95—Reparation authorisations

If satisfied that a person has caused harm to a fish habitat by a contravention of this measure, the Minister can issue a reparation authorisation under which fisheries officers or

other persons authorised by the Minister may take specified action on the Minister's behalf to remedy the damage to a fish habitat. The reasonable costs and expenses in any action can be recovered by the Minister from the person who caused the harm, and if the amount is unpaid, the Minister can impose interest on the amount unpaid. The amount unpaid, together with interest, is a charge in favour of the Minister on any land owned by the person.

96—Related matters

This clause requires the Minister to consult, as far as reasonably practicable, with other public authorities that may also have power to act before the Minister issues a protection order, reparation order or reparation authorisation. However this does not apply if action is being taken as a matter of urgency or in other circumstances of a prescribed kind.

A person cannot claim compensation from the Minister, the Crown, a fisheries officer, or a person acting under the authority of the Minister or a fisheries officer, in respect of a requirement imposed under this Division or on account of any act or omission undertaken or made in the exercise (or purported exercise) of a power under this Division.

97—Registration of orders or authorisation* Registrar-General

This clause allows the Minister to have the Registrar-General register an order or authorisation issued under this Division relating to an activity carried out on land, or requiring a person to take action on or in relation to land. Such an order or authorisation is binding on each owner and occupier from time to time of the land. The Registrar-General must, on application by the Minister, cancel the registration of such an order or authorisation and make appropriate endorsements to that effect.

98—Effect of charge

This clause sets out the priority of a charge imposed on land under this Division.

Division 3—Court orders

99—Additional orders court can make on conviction

This clause sets out the orders a court that convicts a person of an offence against this measure can make in addition to imposing any other penalty.

The orders include—

- imposing conditions on an authority held by the person;
- varying the conditions of an authority held by the person;
- suspending an authority held by the person;
- disqualifying the person from holding or obtaining an authority;
- disqualifying the person from being the director of a body corporate that holds an authority;
- prohibiting the person from being in, on, or in the vicinity of, specified waters without a lawful purpose;
- prohibiting the person from engaging in fishing activities;
- prohibiting the person from being in or on specified boats;
- prohibiting the person from being in or on specified premises connected with the processing of aquatic resources;
- prohibiting the person from having possession of specified devices;
- prohibiting the person from having possession of specified aquatic resources.

An order can be made either on the court's own initiative or on application by the prosecution.

100—Orders ERD Court may make on application* Minister

This clause empowers the Environment, Resources and Development Court to make an order of a kind referred to in clause 99 if satisfied an order of that kind has been made against the person under a corresponding law and the order is justified in the circumstances of the case. The order can be made on the application of the Minister.

101—Provisions relating to orders under this

This clause empowers a court to stipulate that a suspension, disqualification or prohibition order made by the court under this Division is to apply permanently, for a specified period or until further order. If a person contravenes an order

are not only liable for contempt, but are also guilty of an offence for which the maximum penalty is \$100 000.

Division 4—Demerit points scheme

102—Interpretation

This clause contains definitions of terms used in this Division and includes other interpretation provisions.

103—Demerit points for certain offences

This clause provides that a person who is convicted of, or expiates, an offence against this measure of a kind prescribed by the regulations incurs the number of demerit points prescribed by the regulations in relation to that offence. Demerit points incurred or recorded by or in relation to a person under a corresponding law will be taken to have been incurred by the person under this Division.

Demerit points incurred by a person must be recorded against a fishery authority if the person who incurred the points is the holder of the authority or a registered master of a boat registered for use under the authority and the demerit points were incurred in relation to an offence committed by the person against clause 119(4).

104—Consequences of certain number of demerit points being incurred by person or recorded against authority

This clause provides that if a natural person incurs 200 or more demerit points within 5 years the person or body is liable to be disqualified from holding or obtaining an authority, from being a director of a body corporate that holds an authority and from being registered as the master of a boat used pursuant to an authority. The disqualifications operate for a period of 10 years. If a body corporate incurs 200 or more demerit points, the body corporate and each director of the body corporate is liable to be disqualified from holding or obtaining an authority. If 200 or more demerit points are recorded against a fishery authority within 5 years, the Minister must cancel the authority unless the authority is transferrable and the authority is either transferred to an eligible transferee or is compulsorily acquired by the Minister.

105—Notices to be sent by Minister when certain number of demerit points are incurred or recorded

The clause requires the Minister to notify a person when—

- (a) the person has incurred a number of demerit points equal to or exceeding one-half of the number that results in liability to be disqualified; or
- (b) a number of demerit points equal to or exceeding one-half of the number that results in an fishery authority held by the person becoming liable to cancellation are recorded against the authority.

106—Notices to be sent by Minister when person becomes liable to disqualification or authority is to be cancelled

This clause provides that if a person is liable to be disqualified, the Minister must give the person notice of the disqualification. If an authority is liable to cancellation, the Minister must give the holder of the authority notice of the cancellation. If a person is liable to disqualification and the person holds an authority, the notice of disqualification must also inform the holder that any non-transferable authority held by the person is cancelled and that any transferable authority held by the person must be transferred to an eligible transferee, is suspended until the transfer takes effect and, if not transferred, will be compulsorily acquired by the Minister.

107—Disqualification etc and discounting of demerit points

This clause specifies that a notice of disqualification or cancellation takes effect on the day specified in the notice. If a transferable authority is not transferred as required by a notice of disqualification, the Minister must acquire it compulsorily in accordance with the regulations. An authority that is compulsorily acquired cannot subsequently be issued to the person from whom it was so acquired or an associate of that person. If a person is disqualified, any transferable authority held by the person is suspended until transferred and any non-transferable authority held by the person is cancelled.

If a disqualification takes effect, all demerit points in respect of the offence that brought the aggregate of points to 200 or more are discounted, as are all demerit points in respect of offences committed prior to the time that the person committed that offence. If an authority is transferred, all demerit points recorded against the authority are discounted.

108—Court not to take into account demerit points in determining penalty

The clause provides that in determining the penalty to be imposed on a person convicted of an offence against this measure, the court must not take into account the fact that, in consequence of the conviction, demerit points will be incurred by the person.

Division 5—Miscellaneous

109—Additional penalty based on value of aquatic resources

This clause provides that if a person is convicted of an offence involving the taking, sale or purchase, or possession or control, of aquatic resources, the court must, in addition to imposing any other penalty prescribed by this measure, impose a penalty equal to 5 times the wholesale value of the aquatic resources at the time at which the offence was committed, or \$100 000, whichever is the lesser.

Part 9—Review and appeals

Division 1—Internal review

110—Review of certain decisions of Minister

This clause gives a person aggrieved by a decision of the Minister—

- (a) to refuse an application for the issue or renewal of an authority; or
- (b) to refuse an application for consent to transfer an authority; or
- (c) to impose conditions on an authority or vary a condition of an authority,

the right to apply to the Minister for a review of the decision. On a review, the Minister may confirm or vary the decision under review or set aside the decision and substitute a new decision.

Division 2—Appeals

111—Appeal to District Court against decision of Minister

This clause provides that if an applicant for a review is not satisfied with the decision of the Minister on the review, the person may appeal to the Administrative and Disciplinary Division of the District Court against the decision.

112—Appeals to ERD Court against protection or reparation order

This clause gives a person to whom a protection order or reparation order has been issued the right to appeal to the Environment, Resources and Development Court against the order.

113—Constitution of ERD Court

This clause sets out how the ERD Court is to be constituted when exercising jurisdiction under this measure.

Part 10—Miscellaneous

Division 1—General

114—Exemptions

This clause empowers the Minister to exempt persons and classes of persons from specified provisions of this measure by notice in the Gazette. An exemption may be made subject to conditions. Contravention of a condition constitutes an offence punishable by a maximum fine of \$10 000. Before making an exemption that relates to, or is to apply in respect of, the Adelaide Dolphin Sanctuary, the Minister must consult with the Minister for the Adelaide Dolphin Sanctuary. Before making an exemption that relates to, or is to apply in respect of, the River Murray, the Minister must consult with the Minister for the River Murray.

115—Registers

This clause specifies the registers that the Minister must keep. The registers must be kept available for inspection, without fee, by members of the public at a public office and on a web site. On payment of the fee fixed by regulation, a member of the public may obtain a copy of any part of a register kept under this measure.

116—Recovery of fees, levies and other amounts

This clause provides that fees, levies and other amounts payable under this measure are recoverable by court action as debts due to the Minister.

117—Statutory declarations

This clause provides that if a person is required under this measure to provide information to the Minister, the Director or a prescribed authority, the Minister, Director or prescribed authority (as the case may be) may require that the information be verified by statutory declaration and, in that

event, the person will not be taken to have provided the information as required unless it has been verified in accordance with the requirements of the Minister, Director or prescribed authority.

118—False or misleading statement or information

This clause makes it an offence for a person to make a statement, or provide information, that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this measure. The maximum penalty if the offence relates to a statement or information relating to a quota entitlement under a fishery authority is \$300 000 if the offender is a body corporate or \$60 000 if the offender is a natural person. In any other case the maximum penalty is \$100 000 if the offender is a body corporate or \$20 000 if the offender is a natural person.

119—Offences committed by bodies corporate or agents, or involving registered boats

Subclause (1) provides that if a body corporate is guilty of an offence against this measure, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless he or she proves that he or she exercised all reasonable diligence to prevent the commission of the offence.

Subclause (2) provides that if a person is guilty of an offence against this measure committed while he or she was acting as the agent of another person, that other person is guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

Subclause (3) provides that if a registered boat is used in or in connection with the commission of an offence against this measure, the registered owner of the boat is guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

Subclause (4) provides that—

(a) if the registered master of a registered boat is not the registered owner and—

(i) the registered master, while on the boat, does or omits to do an act or thing the doing or omission of which constitutes an offence against this measure or that would, if done or omitted to be done by the registered owner, constitute an offence against this measure; or

(ii) the registered master does or omits to do, in relation to a fishing activity conducted by use of the boat, an act or thing the doing or omission of which constitutes an offence against this measure or that would, if done or omitted to be done by the registered owner, constitute an offence against this measure,

the registered owner is guilty of an offence and liable to the same penalty as is prescribed for the principal offence or to the penalty to which the registered owner would be liable if the act or thing, if done or omitted to be done by him or her, constituted an offence against this measure;

(b) if—

(i) an employee or other agent of the registered owner or the registered master, while on the boat, does or omits to do an act or thing the doing or omission of which constitutes an offence against this measure or that would, if done or omitted to be done by the registered owner, constitute an offence against this measure; or

(ii) an employee or other agent of the registered owner or the registered master does or omits to do, in relation to a fishing activity conducted by use of the boat, an act or thing the doing or omission of which constitutes an offence against this measure or that would, if done or omitted to be done by the registered owner, constitute an offence against this measure,

then—

(iii) the registered owner is guilty of an offence and liable to the same penalty as is prescribed for the principal offence or to the penalty to which the registered owner would be liable if the act or thing, if done or omitted to be done by him or her, constituted an offence against this measure; or

(iv) if the registered owner is not the registered master, the registered owner and the registered master are each guilty of an offence and liable to the same penalty as is prescribed for the principal offence or to the penalty to which the registered owner would be liable if the act

or thing, if done or omitted to be done by him or her, constituted an offence against this measure.

120—Commencement of prosecutions

This clause requires prosecutions for expiable offences against this measure to be commenced within the time limit prescribed for expiable offences by the *Summary Proceedings Act 1921*. Prosecutions for non-expiable offences must be commenced within 3 years after the date of the offence or, with the authorisation of the Director of Prosecutions, at any later time within 5 years after the date of the alleged offence.

121—Self-incrimination

This clause provides that if a natural person is required to give information, answer a question or produce, or provide a copy of, a document or record under Part S and the information, answer, document or record would tend to incriminate the person or make the person liable to a penalty the person must nevertheless give the information, answer the question or produce, or provide a copy of, the document or record, but the information, answer, document or record will not be admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty other than proceedings in respect of the making of a false or misleading statement or declaration.

122—Rewards

This clause empowers the Minister to pay a reward not exceeding the prescribed amount to a person who provides information leading to the conviction of a person for an offence against this measure.

123—Confidentiality

Subclause (1) makes it an offence for a person engaged or formerly engaged in the administration of this measure or the repealed Act to divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—

(a) as required or authorised by or under this measure or any other Act or law; or

(b) with the consent of the person to whom the information relates; or

(c) in connection with the administration of this measure, the repealed Act or a corresponding law; or

(d) to a law enforcement, prosecution or administrative authority of a place outside this State, where the information is required for the proper administration or enforcement of a law of that place relating to fishing; or

(e) for the purposes of any legal proceedings arising out of the administration of this measure, the repealed Act or a corresponding law.

Subclause (2) provides that the subclause (1) does not prevent the disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person.

Subclause (3) provides that information that has been disclosed under subclause (1) for a particular purpose must not be used for any other purpose by—

(a) the person to whom the information was disclosed; or

(b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

The maximum penalty for an offence against this clause is \$10 000.

Subclause (4) provides that the Minister, the Chief Executive or any other person to whom a return is provided under this measure by the holder of a fishery licence or other authority cannot be required by subpoena or otherwise to produce a court any information contained in such a return.

124—Service

This clause provides for the service of documents.

125—Evidentiary provisions

This clause contains evidentiary provisions which are used to facilitate proof of various matters in proceedings against this measure.

Division 2—Regulations

126—General

This clause empowers the Governor to make such provisions as are contemplated by this measure or as are necessary or expedient for the purposes of this measure.

127—Regulations relating to conservation and management of aquatic resources, management of fisheries and aquatic reserves and regulation of fishing

This clause empowers the Governor to make regulations for the conservation and management of the aquatic resources of the State, the management of fisheries and aquatic reserves and the regulation of fishing. Regulations for the management of a fishery or relating to aboriginal traditional fishing can only be made on the recommendation of the Minister. The Minister may recommend the making of regulations for the management of a fishery if satisfied that the regulations are necessary or desirable for the purpose of giving effect to a management plan for the fishery. The Minister may recommend the making of regulations relating to aboriginal traditional fishing if—

(a) the Minister is satisfied that the regulations are necessary or desirable for the purpose of giving effect to an aboriginal traditional fishing management plan made with a native title group under Part 6 Division 2; and

(b) the regulations are, in the opinion of the Minister, consistent with the plan and the indigenous land use agreement under which the plan was made; and

(c) the Minister has consulted the native title group and given due consideration to any comments made by the group in relation to the regulations.

128—Regulations relating to processing of aquatic resources

This clause empowers the Governor to make regulations for the regulation of processing of aquatic resources and matters ancillary or incidental to or connected with such processing.

129—Regulations relating to control of exotic aquatic organisms and disease

This clause empowers the Governor to make regulations for the control of exotic aquatic organisms and the prevention, control and eradication of disease in aquatic resources.

Division 3—Review of Act**130—Review of Act by Minister**

This clause requires the Minister to cause a review of the operation of this measure to be conducted and a report on the results of the review to be submitted to him or her. The review must be undertaken after the tenth anniversary of the commencement of this measure and must be submitted to the Minister before the twelfth anniversary of that commencement. The Minister must table copies of the report in both Houses of Parliament.

Schedule 1—Repeal and transitional provisions

This Schedule repeals the *Fisheries Act 1982* and the *Fisheries (Gulf St. Vincent Prawn Fishery Rationalisation) Act 1987* and makes transitional provisions with respect to various matters.

Schedule 2—Related amendments

This Schedule makes related amendments of a consequential nature to a number of other Acts.

The Hon. R.I. LUCAS secured the adjournment of the debate.