



TASMANIA

**MARINE RESOURCES (SAVINGS AND TRANSITIONAL)
ACT 1995**

No. 24 of 1995

TABLE OF PROVISIONS

PART 1

PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2

SAVINGS AND TRANSITIONAL MATTERS

Division 1—Occupation authorities

4. Applications for occupation authorities
5. Occupation authorities
6. Tender for occupation authority
7. Variation of leases

Division 2—Licences and permits

8. Applications for licences
9. Marine farming licence
10. Fishing licences
11. Fish processing licences
12. Exploratory licence
13. Permits for scientific purposes

Division 3—Deeds of agreement

14. Deeds of agreement
15. Interests in deeds of agreement

Division 4—Allocation arrangements

16. Total allowable catch
17. Allocation of total allowable catch

Division 5—Proceedings

18. Inquiries and investigations
19. Infringement notices
20. Proceedings
21. Appeals
22. Closing orders

Division 6—Miscellaneous matters

23. Officers
24. Body corporate continued
25. Arrangements with Commonwealth
26. Returns and records
27. Draft marine farming development plans
28. Regulations continue
29. Regulations
30. Administration of Act



**MARINE RESOURCES (SAVINGS AND TRANSITIONAL)
ACT 1995**

No. 24 of 1995

AN ACT to provide for matters of a savings and transitional nature arising as a consequence of the repeal of the *Fisheries Act 1959*

[Royal Assent 15 September 1995]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART 1

PRELIMINARY

Short title

1—This Act may be cited as the *Marine Resources (Savings and Transitional) Act 1995*.

Commencement

2—This Act commences on a day or days to be proclaimed.

Interpretation

3—In this Act—

“**fish**” means fish within the meaning of the *Living Marine Resources Management Act 1995*;

“**former Act**” means the *Fisheries Act 1959*;

“**Joint Authority**” means a Joint Authority established under the *Fisheries Management Act 1991* of the Commonwealth;

“**lease**” means a lease within the meaning of the *Marine Farming Planning Act 1995*;

“**lease area**” means the area which is the subject of a lease;

“**Living Marine commencement day**” means the day on which the *Living Marine Resources Management Act 1995* commences;

“**management plan**” means a management plan approved under Part 3 of the *Living Marine Resources Management Act 1995*;

“**Marine Farming commencement day**” means the day on which the *Marine Farming Planning Act 1995* commences;

“**marine farming development plan**” means a marine farming development plan within the meaning of the *Marine Farming Planning Act 1995*;

“**occupation authority**” means a lease, re-seeding lease or permit under Part II of the former Act;

“**total allowable catch**” means the total quantity of a kind or species of fish that may be taken from a fishery.

PART 2**SAVINGS AND TRANSITIONAL MATTERS*****Division 1—Occupation authorities*****Applications for occupation authorities**

4—(1) Any application in respect of an occupation authority made under the former Act and not determined before the Marine Farming commencement day ceases to have effect on that day.

(2) The Minister may issue a certificate of preference within the meaning of the *Marine Farming Planning Act 1995* for the purposes of that Act—

- (a) to a person whose application referred to in subsection (1) ceases to have effect under that subsection; or
- (b) to a person whose application was rejected under the former Act.

(3) The Minister may refund to a person all or part of any fees paid by that person in respect of an application referred to in subsection (1).

Occupation authorities

5—(1) An occupation authority purportedly issued under the former Act is a valid occupation authority and has been validly issued under that Act despite any defect in its form or content.

(2) An occupation authority in force under the former Act immediately before the Marine Farming commencement day is, on that day, a lease and—

- (a) is subject to the same conditions and restrictions as it was under the former Act; and
- (b) continues to have effect and is in force for the remainder of its term unless the Minister sooner cancels it.

(3) The Minister, to ensure that a lease is consistent with the *Marine Farming Planning Act 1995* or a marine farming development plan, may—

- (a) revoke or vary any condition or restriction imposed under the former Act in respect of the lease; and
- (b) impose any other condition or restriction the Minister considers appropriate.

(4) An occupation authority which is a lease by virtue of subsection (2) may be renewed, transferred, subdivided or sub-leased under the *Marine Farming Planning Act 1995* even though there is no marine farming development plan in respect of the area to which the lease relates.

Tender for occupation authority

6—A tender for an occupation authority submitted under the former Act and not accepted or rejected before the Marine Farming commencement day ceases to have effect on that day.

Variation of leases

7—(1) The holder of a lease issued under the former Act and in force as a lease by virtue of section 5 (2) of this Act may apply to the Minister to vary the lease area at any time within 12 months of the Marine Farming commencement day.

(2) The Minister may vary a lease area to include a greater area only if—

- (a) the proposed total lease area is—
 - (i) no more than 110% of the original lease area; and
 - (ii) in a position not significantly different to that indicated in the lease; and
 - (iii) within a marine farming zone as defined by the *Marine Farming Planning Act 1995*; and
- (b) the lessee agrees to pay any amount equivalent to the market value of the additional area as assessed under the *Land Valuation Act 1971*.

(3) If the Minister varies a lease area, the Minister may impose new conditions or amend any existing condition of the lease.

(4) The Minister may vary a lease area by issuing a new lease only if—

- (a) the proposed area is greater than 110% of the original area; and
- (b) in the opinion of the Minister—
 - (i) it would not have a detrimental effect on another lessee; or
 - (ii) there is not a good reason for refusing to vary the lease area; and
- (c) the lessee agrees to—
 - (i) accept any conditions the Minister determines; and
 - (ii) pay any prescribed charges or prescribed fees; and
 - (iii) pay any amount equivalent to the market value of the additional area as assessed under the *Land Valuation Act 1971*.

(5) A person may only make one application under this section in respect of each lease held by that person.

(6) This section applies only to a lease area in respect of which there is a marine farming development plan.

Division 2—Licences and permits

Applications for licences

8—(1) An application for any of the following licences made under the former Act and not determined immediately before the Living Marine commencement day ceases to have effect on that day:—

- (a) a marine farm licence;
- (b) a fishing boat licence;
- (c) a licence to use a fishing boat;
- (d) a licence in respect of a class of engine used to capture fish;

- (e) a licence to take fish;
- (f) a licence to sell or offer for sale fish;
- (g) a licence in respect of premises used for processing fish;
- (h) a licence in respect of premises used for storing, packaging or transporting fish.

(2) The Minister may refund to a person all or part of any fees paid by that person in respect of an application referred to in subsection (1).

Marine farming licence

9—(1) A marine farm licence in force under the former Act immediately before the Living Marine commencement day is, on that day, a marine farming licence under the *Living Marine Resources Management Act 1995* and—

- (a) is subject to the same conditions and restrictions as it was under the former Act; and
- (b) continues in force for the remainder of its term unless the Minister sooner cancels it.

(2) The Minister may—

- (a) revoke or vary any condition or restriction imposed under the former Act in respect of a marine farm licence; and
- (b) impose any other condition or restriction the Minister considers appropriate.

Fishing licences

10—(1) Any of the following licences in force under the former Act immediately before the Living Marine commencement day are, on that day, a fishing licence under the *Living Marine Resources Management Act 1995*:—

- (a) a fishing boat licence;
- (b) a licence in respect of a class of engine used to capture fish;
- (c) a licence to use a fishing boat;

- (d) a licence to take fish;
 - (e) a licence to sell or offer for sale fish.
- (2) A fishing licence—
- (a) is subject to the same conditions and restrictions as it was under the former Act; and
 - (b) is taken to have commenced on the date of issue of the licence under the former Act; and
 - (c) continues in force for the remainder of its term unless the Minister sooner cancels it.
- (3) The Minister may—
- (a) revoke or vary any condition or restriction imposed under the former Act in respect of any licence referred to in subsection (1); and
 - (b) impose any other condition or restriction the Minister considers appropriate.

Fish processing licences

11—(1) Any of the following licences in force under the former Act immediately before the Living Marine commencement day are, on that day, a fish processing licence under the *Living Marine Resources Management Act 1995*:—

- (a) a licence in respect of premises used for processing fish;
 - (b) a licence in respect of premises used for storing, packaging or transporting fish.
- (2) A fish processing licence—
- (a) is subject to the same conditions and restrictions as it was under the former Act; and
 - (b) continues in force for the remainder of its term unless the Minister sooner cancels it.
- (3) The Minister may—
- (a) revoke or vary any condition or restriction imposed under the former Act in respect of any licence referred to in subsection (1); and
 - (b) impose any other condition or restriction the Minister considers appropriate.

Exploratory licence

12—(1) An exploratory licence issued for a period not exceeding 5 years and in force under the former Act immediately before the Living Marine commencement day continues, on that day, to be in force until whichever of the following occurs first:—

- (a) it expires;
- (b) the Minister cancels it.

(2) An exploratory licence, other than an exploratory licence referred to in subsection (3), issued for a period exceeding 5 years and in force under the former Act immediately before the Living Marine commencement day continues, on that day, to be in force until whichever of the following occurs first:—

- (a) it expires;
- (b) the Minister cancels it;
- (c) a period of 12 months after that commencement day has elapsed.

(3) An exploratory licence issued for a period of 20 years and in force under the former Act immediately before the Living Marine commencement day is, on that day, a special lease under the *Marine Farming Planning Act 1995* which is—

- (a) subject to any conditions and restrictions the Minister determines; and
- (b) subject to the same conditions and restrictions as under the former Act.

(4) An exploratory licence issued under the former Act without a specified term and in force immediately before the Living Marine commencement day continues, on that day, to be in force for a period of 12 months unless the Minister sooner cancels it.

Permits for scientific purposes

13—A permit issued under section 52 of the former Act and in force immediately before the Living Marine commencement day continues, on that day, to be in force until whichever of the following occurs first:—

- (a) the permit expires;

- (b) the Minister cancels it;
- (c) a period of 12 months after that commencement day has elapsed.

Division 3—Deeds of agreement

Deeds of agreement

14—(1) A deed of agreement in force under the former Act immediately before the Living Marine commencement day continues, on that day, to be in force until whichever of the following occurs first:—

- (a) it expires;
- (b) it is terminated.

(2) The common law rule against perpetuities and the *Perpetuities and Accumulation Act 1992* does not apply to a deed of agreement referred to in subsection (1).

Interests in deeds of agreement

15—(1) The register of interests established and existing under the former Act immediately before the Living Marine commencement day is, on that day, a register of interests under the *Living Marine Resources Management Act 1995*.

(2) An interest in a deed of agreement registered and in force under the former Act immediately before the Living Marine commencement day continues, on that day, to be in force until the registration of the interest ceases.

(3) An objection to the registration of an interest under the former Act and not determined before the Living Marine commencement day may, on or after that day, be determined under the former Act.

Division 4—Allocation arrangements**Total allowable catch**

16—(1) A total allowable catch for any species or class of fish specified in regulations made under the former Act or in regulations made by a Joint Authority and in force immediately before the Living Marine commencement day continues, on that day, to be a total allowable catch as specified in those regulations for that species or class of fish during the period specified in those regulations.

(2) The Minister is not required to make a declaration under section 93 of the *Living Marine Resources Management Act 1995* relating to quota management in respect of a total allowable catch referred to in this section.

Allocation of total allowable catch

17—(1) Any allocation of part of a total allowable catch for any species or class of fish provided for in regulations made under the former Act or in regulations made by a Joint Authority and in force immediately before the Living Marine commencement day is, on that day, an allocation of part of a total allowable catch provided for in a management plan for that species or class of fish.

(2) Any allocation of part of a total allowable catch for any species or class of fish provided for under a deed of agreement under the former Act and in force immediately before the Living Marine commencement day is, on that day, an allocation of part of a total allowable catch provided for in a management plan for that species or class of fish.

(3) There is no appeal in respect of any allocation of part of a total allowable catch referred to in this section.

Division 5—Proceedings**Inquiries and investigations**

18—(1) Any inquiry or investigation conducted under the former Act relating to fishing or the fishing industry and not completed immediately before the Living Marine commencement day may, on that day, continue to be conducted under the former Act.

(2) Any inquiry or investigation conducted under the former Act relating to marine farming and not completed immediately before the Marine Farming commencement day may, on that day, continue to be conducted under the former Act.

Infringement notices

19—An infringement notice served on a person under the former Act and in force immediately before the Living Marine commencement day continues, on that day, to be in force until whichever of the following occurs first:—

- (a) 42 days after the service if the person has accepted it;
- (b) it is withdrawn;
- (c) proceedings relating to it have been concluded.

Proceedings

20—(1) Any proceedings instituted under the former Act and not determined before the Living Marine commencement day may, on or after that day, be determined under the former Act.

(2) Any proceedings relating to offences under regulations made under the former Act and instituted after the Living Marine commencement day may, on or after that day, be determined under the former Act.

Appeals

21—Any appeal instituted under the former Act and not determined before the Living Marine commencement day may, on or after that day, be determined under the former Act.

Closing orders

22—A closing order made under the former Act and in force immediately before the Living Marine commencement day continues, on that day, to be in force until revoked by the Minister.

Division 6—Miscellaneous matters**Officers**

23—(1) A person who was an officer under the former Act immediately before the Living Marine commencement day is, on that day, a fisheries officer under the *Living Marine Resources Management Act 1995* for—

- (a) a period of 6 months; or
- (b) a lesser period the Minister determines.

(2) A person who was an authorised person for the purposes of Division 3 of Part II of the former Act immediately before the Marine Farming commencement day is, on that day, a fisheries officer under the *Marine Farming Planning Act 1995* for—

- (a) a period of 6 months; or
- (b) a lesser period the Minister determines.

Body corporate continued

24—(1) The corporation sole constituted under section 8 (2) of the former Act continues in existence under the name of Living Marine Resources Corporation.

(2) The identity, rights, obligations and assets of the corporation sole continue in existence.

(3) Any real property acquired by, or vested in, the corporation sole under the former Act and not disposed of under that Act continues to be vested in the corporation sole.

(4) The corporation sole—

- (a) has perpetual succession with a common seal; and

- (b) may sue and be sued in its corporate name; and
- (c) may acquire, hold, dispose of and otherwise deal with property.

(5) All courts and persons acting judicially are to take judicial notice of the imprint of the common seal of the corporation sole on a document and presume that it was duly sealed by the corporation sole.

Arrangements with Commonwealth

25—An arrangement entered into with the Commonwealth or with the Commonwealth and other States under the former Act and in force immediately before the Living Marine commencement day is, on that day, an arrangement with the Commonwealth under Part 7 of the *Living Marine Resources Management Act 1995*.

Returns and records

26—Any returns or records kept or lodged under the former Act immediately before the Living Marine commencement day are, on that day, records kept under Division 2 of Part 6 of the *Living Marine Resources Management Act 1995*.

Draft marine farming development plans

27—(1) Any procedures and activities carried out before the Marine Farming commencement day in relation to the preparation of a marine farming development plan are, on that day, taken to be procedures and activities carried out under Division 1 of Part 3 of the *Marine Farming Planning Act 1995*.

(2) If the Minister is satisfied that the procedures have been properly carried out and a marine farming development plan as prepared according to those procedures meets the objectives of resource management as defined in the *Marine Farming Planning Act 1995*, the Minister may—

- (a) approve the draft plan; and
- (b) declare that the draft plan constitutes a marine farming development plan under that Act.

Regulations continue

28—(1) Regulations made under the former Act and in force immediately before the Living Marine commencement day continue, on that day, to be in force until whichever of the following occurs first:—

(a) they are rescinded;

(b) a period of 12 months after that commencement day has elapsed.

(2) A provision of the *Marine Farming Planning Act 1995*, the *Living Marine Resources Management Act 1995* or regulations, rules, orders or notices made under those Acts which is inconsistent with the provision of a regulation made under the former Act prevails over the latter provision to the extent of that inconsistency.

Regulations

29—(1) The Governor may make regulations for the purpose of this Act.

(2) The regulations may provide for matters of a savings and transitional nature in relation to this Act or the former Act.

(3) Regulations made under this section may take effect from the commencement of this Act or a later date.

Administration of Act

30—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for Primary Industry and Fisheries; and
- (b) the Department responsible to the Minister for Primary Industry and Fisheries in relation to the administration of this Act is the Department of Primary Industry and Fisheries.

*[Second reading presentation speech made in:—
House of Assembly on 29 June 1995
Legislative Council on 6 July 1995]*

