



Export Control (Fish and Fish Products) Rules 2021

I, Andrew Edgar Francis Metcalfe AO, Secretary of the Department of Agriculture, Water and the Environment, make the following rules.

Dated 19 March 2021

Andrew Edgar Francis Metcalfe AO
Secretary of the Department of Agriculture, Water and the Environment

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Chapter 1—Preliminary

Part 1—Preliminary

1-1 Name

This instrument is the *Export Control (Fish and Fish Products) Rules 2021*.

1-2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as section 3 of the <i>Export Control Act 2020</i> commences.	3 am (A.C.T.) 28 March 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

1-3 Authority

This instrument is made under the *Export Control Act 2020*.

1-4 Extension of Act to Heard Island and McDonald Islands

- (1) For the purposes of subsection 8(2) of the *Export Control Act 2020*, that Act and this instrument, and the *Regulatory Powers (Standard Provisions) Act 2014* as it applies in relation to the *Export Control Act 2020* and this instrument, extend to:
- (a) the Territory of Heard Island and McDonald Islands; and
 - (b) the exclusive economic zone adjacent to that Territory; and
 - (c) the area that is on or in the continental shelf adjacent to that Territory and is not within the exclusive economic zone adjacent to that Territory.

Note: A reference to *Australian territory* in a provision of the *Export Control Act 2020* or this instrument includes a reference to the Territory of Heard Island and McDonald Islands, the area referred to in paragraph (b) of this subsection and the waters above the area referred to in paragraph (c) of this subsection (see paragraphs 14(d) to (f) of the Act).

- (2) To avoid doubt, the reference in subsection (1) to the *Export Control Act 2020* does not include a reference to legislative instruments made under that Act.

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1-5 Simplified outline of this instrument

General

This instrument prescribes matters and makes other provision in relation to certain fish and fish products (prescribed fish and fish products) for the purposes of the *Export Control Act 2020* (the Act).

Prescribed fish or fish products must not be exported from Australian territory unless the conditions prescribed by this instrument (prescribed export conditions) are complied with. A person may commit an offence or be liable to a civil penalty if prescribed fish or fish products are exported in contravention of prescribed export conditions (see Division 4 of Part 1 of Chapter 2 of the Act).

This instrument prescribes other matters and makes other provision in relation to the export of fish and fish products, including in relation to the following:

- (a) exemptions;
- (b) government certificates;
- (c) registered establishments;
- (d) approved arrangements;
- (e) export permits;
- (f) trade descriptions;
- (g) official marks and official marking devices;
- (h) audits;
- (i) assessments;
- (j) functions and powers of authorised officers;
- (k) records;
- (l) samples;
- (m) damaged or destroyed fish or fish products.

Extension to Territory of Heard Island and McDonald Islands

The *Export Control Act 2020* and this instrument, and the *Regulatory Powers (Standard Provisions) Act 2014* as it applies in relation to the *Export Control Act 2020* and this instrument, extend to the Territory of Heard Island and McDonald Islands and certain areas adjacent to that Territory.

Structure of this instrument and Chapter numbering

This instrument is arranged in Chapters that have the same number and name as the corresponding Chapters in the Act. For example, the provisions of this instrument that are made for the purposes of Chapter 5—Approved arrangements of the Act are included in Chapter 5—Approved arrangements of this instrument. This means there are gaps in the Chapter numbering because there are no provisions for the purposes of some Chapters of the Act.

Part 2—Interpretation

1-6 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Australian territory;
- (b) authorised officer;
- (c) export;
- (d) export operations;
- (e) fish;
- (f) integrity;
- (g) prepare;
- (h) prescribed agriculture law;
- (i) Regulatory Powers Act.

In this instrument:

Act means the *Export Control Act 2020*, and includes:

- (a) legislative instruments made under the *Export Control Act 2020*; and
- (b) the Regulatory Powers Act as it applies in relation to the *Export Control Act 2020*.

amenities includes toilets, showers, locker rooms, change rooms, canteens, kitchens and sleeping quarters on a vessel.

animal food means fish or fish products that are not fit for human consumption and are for use as feed for animals.

applied, in relation to an official mark, has the meaning given by subsection 8-14(1).

Note: For **applied**, in relation to a trade description, see section 247 of the Act.

approved assessor means an individual who is approved under subsection 281(1) of the Act to carry out assessments of fish or fish products under Part 2 of Chapter 9 of the Act.

approved auditor means an individual who is approved under subsection 273(1) of the Act to conduct an audit referred to in section 9-1 of this instrument.

Australian Crocodile Meat Standard means Australian Standard AS 4467:1998, *Australian Standard for the Hygienic Production of Crocodile Meat for Human Consumption*, as that Standard exists at the commencement of this instrument.

Australian Fish Names Standard means the document titled *Australian Fish Names Standard* AS 5300-2019, as in force from time to time.

Australian Shellfish Export Standards means the *Australian Shellfish Quality Assurance Program: Export Standards* published by the Department, as that document exists at the commencement of this instrument.

Note: The Standards could in 2021 be viewed on the Department's website (<http://www.awe.gov.au>).

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bulk-loaded: fish or fish products are bulk-loaded if the fish or fish products are loaded directly into a container system unit, or directly into the hold of a vessel, unpackaged (but they may be boxed or drummed and palletised).

can means an immediate container made of metal, glass or other material suitable as a hermetically sealed container.

canned means thermally processed and enclosed in a hermetically sealed can.

catcher boat means a vessel used for:

- (a) taking or holding fish intended for export as food; or
- (b) taking or holding fish intended for export as food and one or more of the following:
 - (i) killing or dismembering the fish (except shucking shellfish);
 - (ii) bleeding the fish;
 - (iii) sorting or grading the fish;
 - (iv) washing the fish;
 - (v) chilling, icing, freezing or salting the fish for transport;

but not for any other operations to prepare fish or fish products.

Note: **Take**, in relation to fish, means catch, capture or harvest (see section 12 of the Act).

Codex means the Codex Alimentarius issued by the body known as the Codex Alimentarius Commission of the Food and Agriculture Organization of the United Nations and the World Health Organisation, as in force from time to time.

Note: The Codex Alimentarius could in 2021 be viewed on the website of the Food and Agriculture Organization of the United Nations (<http://www.fao.org>).

commercially sterile, in relation to fish or fish products, means free of pathogens that are capable of growing under the conditions the fish or fish products are likely to encounter during storage and distribution at ambient temperature.

construction, in relation to an establishment or equipment, includes design, installation, assembly, layout and the materials of which the establishment and equipment are made.

container system unit means a container designed for use as a unit of cargo handling equipment in the transport of goods by aircraft or vessel.

critical control point, in relation to a hazard, means a step during the production of food at which a control can be applied that is essential to prevent or eliminate the hazard or reduce its occurrence to an acceptable level.

critical limit, in relation to a hazard, means the limit to which the hazard must be controlled to prevent or eliminate it or reduce its occurrence to an acceptable level.

crocodile meat means the edible part of a crocodile.

depuration has the same meaning as in the Australian Shellfish Export Standards.

disease, in relation to a fish, means a disease suffered by or carried by the fish that is likely to be transmitted through fish or fish products.

dismembering, a fish, includes gutting and gilling the fish.

equipment includes any implement for the preparation of food, but does not include a vehicle used to transport food.

essential services includes:

- (a) water, gas and electricity; and
- (b) sewerage, drainage and waste disposal systems.

exporter of prescribed fish or fish products means:

- (a) the applicant for an export permit for the fish or fish products; or
- (b) if an export permit has been issued for the fish or fish products—the holder of the export permit.

fishing vessel means a vessel used for operations to prepare fish.

fish product means a product containing fish.

Note: For **fish**, see section 12 of the Act.

floors includes stairs, platforms and like areas.

food carrying compartment, of a conveyance, means the part or area of the conveyance in which fish or fish products are carried.

food contact surface means a surface that is likely to come into contact with exposed fish, fish products or their ingredients.

Example: Fish or fish products that are being prepared but have not been packaged are exposed.

food handler means a person who directly handles fish, fish products or their ingredients or who handles food contact surfaces.

food handling area means:

- (a) in Part 2 of Chapter 5—an area of a registered establishment (including a refrigeration chamber or storage area) used for exposed prescribed fish or fish products or their ingredients; or
- (b) in any other provision—an area (including a refrigeration chamber or storage area) where fish, fish products or their ingredients are prepared or where packaging materials are stored.

Food Standards Code means the Australia New Zealand Food Standards Code.

HACCP means the hazard analysis and critical control point system for food safety management set out in the annex to CAC/RCP 1-1969 (General Principles of Food Hygiene), adopted by the Codex.

HACCP plan means a document prepared in accordance with the principles of HACCP to ensure control of hazards that are significant for food safety in relation to fish or fish products.

Harvesting Areas (Shellfish for Export) List means the List with that name, as existing from time to time, that is:

- (a) prepared by:
 - (i) the Secretary; or

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- (ii) an SES employee in the Department authorised by the Secretary; or
 - (iii) an acting SES employee in the Department authorised by the Secretary; and
- (b) published on the Department’s website.

hazard means a biological, chemical or physical agent in, or a condition of, food that has the potential to cause harm to human health.

IANZ means the accreditation scheme known as International Accreditation New Zealand maintained by the Accreditation Council under section 35 of the *Standards and Accreditation Act 2015* of New Zealand as in force at the commencement of this instrument.

immediate container, in relation to fish or fish products, means the primary covering in which the fish or fish products are packed.

ingredient means a substance (including a food additive) that is a constituent of fish or fish products (including raw materials).

installed: a resources industry structure is **installed** in an area at a time if, assuming that the structure were a sea installation within the meaning of the *Sea Installations Act 1987* and the area were part of an adjacent area within the meaning of that Act, the structure would be taken under section 6 of that Act to be installed in an adjacent area at the time.

loaded for export has the meaning given by section 1-7.

lot:

- (a) of fish or fish products other than shellfish—means a quantity of fish or fish products of the same kind processed or packed under essentially the same conditions during a particular time interval, usually not exceeding 24 hours, and usually from a particular processing or packing line or other identifiable processing or packing unit; or
- (b) of shellfish—means a quantity of a single species of shellfish harvested from a particular harvesting area and designated by a single harvest area number.

low acid means a pH value of greater than 4.6 and water activity greater than 0.85_{aw}.

major component: fish or fish products are the **major component** in a fish product if the fish or fish products comprise the largest proportion of the fish product (by weight or volume).

manufacturing grade, in relation to fish or fish products, means fish or fish products that are not fit for human consumption but are suitable for further processing to make them fit for human consumption.

medical condition:

- (a) means a medical condition that could affect the fitness for human consumption of fish or fish products; and
- (b) includes an injury, an infected skin lesion or a discharge from the ear, nose or eye.

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MICoR means the *Manual of Importing Country Requirements* published by the Department.

Note: MICoR could in 2021 be viewed on the Department's website (<http://www.awe.gov.au>), but access to the document requires a password.

monitor, in relation to a critical control point and a hazard, means conduct a planned sequence of observations or measurements to assess whether each critical limit in relation to that hazard is under control.

NATA means the National Association of Testing Authorities.

notifiable disease means a disease the presence or suspected presence of which must be notified or reported (however expressed) under a law of the State or Territory where the disease is, or is suspected of being, present.

offshore location means a location that is at least 3 nautical miles from the nearest land mass and practically free from the risk of contamination by pollution sources.

pest includes an insect, arachnid, bird, reptile, rodent and other vermin.

potable, in relation to water, means water that is acceptable for human consumption.

Note: For guidance, see the *Australian Drinking Water Guidelines (2011)* developed by the National Health and Medical Research Council. The Guidelines could in 2021 be viewed on the National Health and Medical Research Council's website (<http://www.nhmrc.gov.au>).

prescribed fish means fish that is prescribed goods under Division 1 of Part 1 of Chapter 2.

prescribed fish and fish products means fish and fish products that are prescribed goods under Division 1 of Part 1 of Chapter 2.

prescribed fish or fish products means fish or fish products that are prescribed goods under Division 1 of Part 1 of Chapter 2.

prescribed fish products means fish products that are prescribed goods under Division 1 of Part 1 of Chapter 2.

processing aid, in relation to fish or fish products, means a substance used in the processing of the fish or fish products or their ingredients to fulfil a technological purpose relating to treatment or processing, but that does not perform a technological function in the final food.

refrigeration chamber includes a chiller, freezer and a coolroom.

registered, in relation to an establishment, means registered under Chapter 4 of the Act.

registered establishment means an establishment that is registered for a kind of export operations in relation to prescribed fish or fish products.

relaying has the same meaning as in the Australian Shellfish Export Standards.

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relevant importing country authority means the authority or body that is responsible for regulating the importation of fish or fish products into that country from Australian territory.

resources industry structure means:

- (a) a resources industry fixed structure (within the meaning of the *Sea Installations Act 1987*); or
- (b) a resources industry mobile unit (within the meaning of that Act) that is not a vessel.

sanitise a surface means apply a process (including using heat or chemicals) to the surface so that the number of pathogens on the surface is reduced to a level that:

- (a) does not compromise the safety of fish or fish products that may come into contact with the surface; and
- (b) does not permit the transmission of a condition or disease.

shelf-stable, in relation to fish or fish products, means the fish or fish products can be safely stored and handled at ambient temperature.

shellfish means the edible species of molluscan bivalves, and includes oysters, clams, scallops, pipis and mussels.

single use item means an instrument, apparatus, utensil or other thing intended to be used only once in connection with food handling.

site of microbiological concern, in relation to fish or fish products, means:

- (a) if a site for the fish or fish products where pathogens are likely to be located is known—that site; or
- (b) in any other case—the thermal centre of the fish or fish products.

storage area means an area used for the storage of fish, fish products, ingredients or packaging materials.

substance includes an organism or any other matter.

thermal centre, of fish or fish products or an immediate container of fish or fish products, means the last point in the fish or fish products, or container, at which a change in temperature occurs.

thermal process, in relation to fish or fish products, means the heat sterilisation process in which the fish or fish products, or immediate containers of fish or fish products, are exposed to a defined heating medium at a specified temperature for a specified time for the purpose of making the fish or fish products commercially sterile.

Note: Examples of heating mediums are air, steam and water.

Timor Sea Maritime Boundaries Treaty means the Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea done at New York on 6 March 2018, as in force at the commencement of this instrument.

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Note: The Treaty is in Australian Treaty Series 2019 No. 16 ([2019] ATS 16) and could in 2021 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Torres Strait Protected Zone means the Protected Zone within the meaning of the *Torres Strait Fisheries Act 1984*.

Note: Under the *Torres Strait Fisheries Act 1984*, ***Protected Zone*** means the area the boundaries of which are described in Annex 9 to the Torres Strait Treaty, and includes:

- (a) in relation to any act or thing done for the purposes of commercial fishing—any area adjacent to the first-mentioned area and to the north of the line described in Annex 5 to the Torres Strait Treaty, being an area that is, under the laws of Papua New Guinea, declared to be an area that is outside but near the Protected Zone for the purposes of commercial fishing; and
- (b) in relation to any act or thing done for the purposes of traditional fishing—any area adjacent to the first-mentioned area and to the north of the line described in Annex 5 to the Torres Strait Treaty, being an area that is, under the laws of Papua New Guinea, declared to be an area that is in the vicinity of the Protected Zone for the purposes of traditional fishing.

The Torres Strait Treaty is a treaty between Australia and the Independent State of Papua New Guinea concerning sovereignty and maritime boundaries in the area between the 2 countries done at Sydney on 18 December 1978. A copy of the treaty is set out in Schedule 1 to the *Torres Strait Fisheries Act 1984*.

validate, in relation to a system of controls, means obtain evidence to demonstrate the effectiveness of the system of controls.

verify means apply methods, procedures, tests and other evaluations in addition to monitoring to determine whether a requirement has been, or is being, complied with.

1-7 Meaning of *loaded for export*

Fish or fish products are ***loaded for export*** if the fish or fish products:

- (a) are placed into a container system unit at a registered establishment for export; or
- (b) are loaded into or onto an aircraft or a vessel for export without first being placed into a container system unit.

Chapter 2—Exporting goods

Part 1—Goods

Division 1—Prescribed goods

2-1 Fish and fish products that are prescribed goods

- (1) For the purposes of subsection 28(1) of the Act and subject to subsection (3) of this section, goods that:
- (a) are fish or fish products; and
 - (b) are intended to be exported as food;
- are prescribed for the purposes of the Act.

Note 1: **Fish** means aquatic vertebrates and aquatic invertebrates but does not include mammals or birds (see section 12 of the Act).

Note 2: For **food**, see section 12 of the Act.

Note 3: Fish or fish products covered by this subsection are taken not to be prescribed goods for the purposes of the Act in the circumstances prescribed by section 2-2 of this instrument (see the definition of **prescribed goods** in section 12 of the Act).

- (2) If:
- (a) fish or fish products of a kind referred to in a paragraph of subsection (3) are intended to be exported to a country (the **importing country**); and
 - (b) for the purpose of meeting an importing country requirement of that country, one or more requirements of the Act must be complied with;
- then, for the purposes of subsection 28(1) of the Act, the fish or fish products that are intended to be exported to the importing country are prescribed for the purposes of the Act.

Example: Fish products where fish or fish products are not the major component would be prescribed if a requirement of the Act would need to be complied with in relation to the products for the purpose of meeting an importing country requirement.

Note: The Act will apply to fish and fish products to which this subsection applies in the same way as it applies to goods prescribed for the purposes of the Act under subsection (1).

- (3) The following goods are not prescribed for the purposes of subsection 28(1) of the Act unless subsection (2) of this section applies in relation to the goods:
- (a) liquid fish and liquid fish products exported in a consignment of not more than 10 litres;
 - (b) dried fish and dried fish products (other than dried abalone) exported in a consignment of not more than 2 kilograms;
 - (c) fish products where fish or fish products are not the major component;
 - (d) fish or fish products that are animal food or pharmaceutical material;
 - (e) fish or fish products not covered by paragraphs (a) to (d) (other than dried abalone) exported in a consignment of not more than 10 kilograms;
 - (f) fish or fish products in the form of a tablet or capsule;
 - (g) fish or fish products for export to New Zealand.

2-2 Fish and fish products that are taken not to be prescribed goods

For the purposes of subsection 28(4) of the Act, fish and fish products covered by subsection 2-1(1) of this instrument are taken not to be prescribed goods for the purposes of the Act if the fish or fish products:

- (a) are stores for the use of passengers and crew on an aircraft or a vessel on a flight or voyage from Australian territory; or
- (b) are for the service of an aircraft or a vessel on a flight or voyage from Australian territory; or
- (c) are imported into Australian territory and held in bond at all times before being exported; or
- (d) are imported into Australian territory and then exported in the same covering in which, and with the same trade description with which, they were imported; or
- (e) are consigned to an external Territory for consumption in that Territory; or
- (f) are consigned to a resources industry structure that is installed in any of the following areas, for consumption on the structure:
 - (i) the Greater Sunrise special regime area within the meaning of the *Seas and Submerged Lands Act 1973*;
 - (ii) the Greater Sunrise pipeline international offshore area within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*;
 - (iii) the area in or above the Bayu-Undan Gas Field within the meaning of the Timor Sea Maritime Boundaries Treaty;
 - (iv) the Bayu-Undan pipeline international offshore area within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*;
 - (v) the area in or above the Kitan Oil Field within the meaning of the Timor Sea Maritime Boundaries Treaty.

Note 1: Fish or fish products are in the same covering in which they were imported if they are in the same immediate container in which they were packed when imported (see the definition of *immediate container* in section 1-6).

Note 2: A resources industry structure that is not installed is taken to be a vessel (see the *Sea Installations Act 1987*).

Section 2-3

Division 2—Prohibited export and prescribed export conditions

2-3 Purpose and application of this Division

- (1) This Division is made for the purposes of section 29 of the Act.
- (2) This Division applies in relation to prescribed fish and fish products.
 - Note 1: See Division 1 of this Part in relation to goods that are prescribed fish and fish products.
 - Note 2: Fish and fish products are taken not to be prescribed goods in the circumstances prescribed by section 2-2 of this instrument (see the definition of *prescribed goods* in section 12 of the Act).
- (3) However, a provision of this Division (the *relevant provision*) does not apply in relation to prescribed fish or fish products if:
 - (a) the fish or fish products are to be exported in a circumstance referred to in subsection 52(1) or (3) of the Act; and
 - (b) an exemption from the relevant provision is in force in relation to the fish or fish products under Part 2 of Chapter 2 of the Act.
- (4) Also, this Division does not apply in relation to the following prescribed fish or fish products:
 - (a) prescribed fish taken from the Torres Strait Protected Zone by traditional fishers unless the fish is taken in the course of commercial fishing under a licence granted under the *Torres Strait Fisheries Act 1984*;
 - (b) prescribed fish products containing only, or derived from, fish referred to in paragraph (a).

2-4 Export of prescribed fish or fish products is prohibited unless prescribed conditions are complied with

- (1) The export from Australian territory of prescribed fish or fish products is prohibited unless the conditions specified in the items in the following table are complied with.

Prescribed export conditions for prescribed fish or fish products

Item	Prescribed export conditions
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1	Harvesting—shellfish
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Operations to harvest prescribed fish that are shellfish for export, or from which prescribed fish products for export are to be derived, must be carried out in an area specified in the Harvesting Areas (Shellfish for Export) List.

2	Registered establishment
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Operations (other than operations to which subsection (2), (3) or (4) applies) to prepare the fish or fish products for export must be carried out at an establishment that is registered for those operations in relation to the fish or fish products. At the time the operations are carried out, the registration of the establishment must not be suspended in relation to those operations.

3	Approved arrangement
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An approved arrangement covering operations (other than operations to which

Prescribed export conditions for prescribed fish or fish products

Item Prescribed export conditions

subsection (2), (3) or (4) applies) to prepare the fish or fish products for export at the registered establishment referred to in item 2 must be in force. At the time the operations are carried out, the approved arrangement must not be suspended in relation to those operations.

4 Export permit

The exporter of the fish or fish products must hold an export permit for the fish or fish products and the export permit must be in force and not suspended at the time the fish or fish products are exported.

- Note 1: Other conditions may apply in addition to the conditions set out in the above table. For example, prescribed fish products described as biodynamic may also be prescribed organic goods under the *Export Control (Organic Goods) Rules 2021*. The export for food of the fish products would also be subject to export conditions prescribed by that instrument.
- Note 2: A person may commit an offence or be liable to a civil penalty if prescribed goods are exported in contravention of prescribed export conditions (see Division 4 of Part 1 of Chapter 2 of the Act).
- Note 3: The occupier of a registered establishment may commit an offence or be liable to a civil penalty if export operations in relation to which registration of the establishment has been suspended are carried out while the registration is suspended (see section 136 of the Act).
- Note 4: The holder of an approved arrangement may commit an offence or be liable to a civil penalty if export operations in relation to which an approved arrangement has been suspended are carried out while the arrangement is suspended (see section 177 of the Act).
- Note 5: An export permit that is suspended under subsection 231(1) of the Act remains in force while it is suspended. However, while the permit is suspended, it does not authorise the export of the goods for which it was issued (see subsection 232(2) of the Act).

- (2) This subsection applies to operations to prepare prescribed fish for export that are carried out on a catcher boat.
- (3) This subsection applies to the following operations to prepare prescribed fish or fish products for export if the operations are carried out at an establishment where no other operations to prepare prescribed fish or fish products for export are carried out:
- (a) relaying shellfish;
 - (b) in relation to fish grown at the establishment, one or more of the following:
 - (i) taking, holding, killing or dismembering the fish (except holding in wet storage, depurating or shucking shellfish);
 - (ii) sorting or grading the fish;
 - (iii) chilling, icing, freezing or salting the fish;
 - (c) washing fish, using:
 - (i) in relation to shellfish—water sourced from an area that is in an open status and meets the Approved classification criteria of the Australian Shellfish Export Standards; or
 - (ii) in relation to any other fish—clean sea water that does not adversely affect the fitness for human consumption of the fish.

Note 1: **Take**, in relation to fish, means catch, capture or harvest (see section 12 of the Act).

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Part 1 Goods

Division 2 Prohibited export and prescribed export conditions

Section 2-4

Note 2: All other operations to prepare prescribed fish for export (for example, packing, handing and loading) must be carried out at a registered establishment, and an approved arrangement covering those operations must be in force, as required by items 2 and 3 of the table in subsection (1) (unless an exemption is in force in relation to the fish under Part 2 of Chapter 2 of the Act).

Note 3: Growing fish is not an operation to prepare fish (see the definitions of *prepare* and *produce* in section 12 of the Act), and is not required to be carried out at a registered establishment.

(4) This subsection applies to operations to kill or bleed crocodiles if the operations are carried out an establishment where no other operations to prepare prescribed fish or fish products are carried out.

Note: All other operations to prepare crocodiles for export must be carried out at a registered establishment, and an approved arrangement covering those operations must be in force, as required by items 2 and 3 of the table in subsection (1) (unless an exemption is in force in relation to the crocodiles under Part 2 of Chapter 2 of the Act).

Part 2—Exemptions

2-5 Application of this Part

This Part applies in relation to prescribed fish or fish products (in this Part called *relevant goods*).

Note 1: See Division 1 of Part 1 of this Chapter in relation to goods that are prescribed fish and fish products.

Note 2: Fish and fish products are taken not to be prescribed goods in the circumstances prescribed by section 2-2 of this instrument (see the definition of *prescribed goods* in section 12 of the Act).

2-6 Prescribed circumstance—testing the market

For the purposes of paragraph 52(1)(e) of the Act, the circumstance that the relevant goods are to be exported for the purpose of testing the market for the goods is prescribed.

2-7 Prescribed meaning—commercial sample

For the purposes of paragraph 52(2)(a) of the Act, the following meaning is prescribed for the purposes of subsection 52(1) of the Act:

commercial sample of relevant goods means a quantity of the goods, for use as a sample for commercial purposes, not exceeding:

- (a) in the case of liquid—50 litres; and
- (b) in any other case—60 kilograms.

2-8 Period for making application for exemption

For the purposes of subparagraph 53(3)(f)(i) of the Act, the period within which an application for an exemption in relation to relevant goods must be made is the period of 120 days ending on the day that is 10 business days before the following:

- (a) if operations to prepare the relevant goods for export have started—the date it is proposed to export the relevant goods;
- (b) in any other case—the date it is proposed to start carrying out operations to prepare the relevant goods for export.

Note 1: The Secretary may allow a different period (see subparagraph 53(3)(f)(ii) of the Act).

Note 2: An application for an exemption must comply with the requirements in subsection 53(3) of the Act.

2-9 Conditions of exemption—matters to which Secretary must have regard

For the purposes of subsection 55(2) of the Act, a matter to which the Secretary must have regard is whether imposing a condition on an exemption in relation to relevant goods will ensure that one or more objects of the Act will be met in relation to the goods.

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Note: An exemption in relation to relevant goods may be subject to any conditions that the Secretary considers necessary (see subsection 55(1) of the Act). For example, an exemption may be made subject to a limit on the number of consignments that may be exported, or to any condition relevant to registration of an establishment or approval of an arrangement that ensures relevant goods are fit for human consumption.

2-10 Instrument of exemption

For the purposes of paragraph 56(1)(h) of the Act, an instrument of exemption in relation to relevant goods that are to be exported in the circumstance prescribed by section 2-6 of this instrument (testing the market) must state a unique identifier for the establishment where operations to prepare the relevant goods for export (other than storing, handling or loading) were last, or will be, carried out.

2-11 Period of effect of exemption

For the purposes of paragraph 57(b) of the Act, an exemption granted under paragraph 54(1)(a) of the Act remains in force (unless it is revoked under section 59 of the Act):

- (a) for 12 months starting on the day the exemption takes effect; or
- (b) if another period is specified in the instrument of exemption—for the specified period.

Note: The exemption takes effect on the date stated in the instrument of exemption under paragraph 56(1)(e) of the Act (see paragraph 57(a) of the Act).

2-12 Variation of conditions of exemption—matters to which Secretary must have regard

For the purposes of subsection 58(3) of the Act, a matter to which the Secretary must have regard is whether varying a condition of an exemption in relation to relevant goods will ensure that one or more objects of the Act will be met in relation to the goods.

Part 3—Government certificates

2-13 When government certificate may be issued in relation to fish or fish products

For the purposes of subsections 62(1) and (2) of the Act, a government certificate may be issued in relation to fish or fish products that are to be, or that have been, exported.

Note: A government certificate (other than a certificate issued by electronic means) must be retained in a secure place when it is not being used (see section 11-4 of this instrument).

2-14 Matters stated in government certificate—manufacturing grade fish or fish products

For the purposes of subsection 62(1) of the Act, a government certificate issued in relation to manufacturing grade fish or fish products that are to be exported may not state any of the following:

- (a) that the conditions of the registration of an establishment for operations to prepare the fish or fish products for export have been complied with;
- (b) that the conditions of an approved arrangement for operations to prepare the fish or fish products for export have been complied with;
- (c) that the fish or fish products are fit for human consumption.

2-15 Requirements before issue of government certificate—condition of fish or fish products

For the purposes of subparagraph 62(2)(b)(iii) of the Act, before a government certificate making a statement in relation to the condition of fish or fish products is issued, the analysis, assessment or examination of the fish or fish products required for the certificate must be carried out in:

- (a) a laboratory accredited by NATA or IANZ to perform the analysis, assessment or examination; or
- (b) another laboratory accredited against international standards to perform the analysis, assessment or examination and approved by the Secretary.

2-16 Circumstances for refusing to issue government certificate

Circumstances relating to all fish or fish products

- (1) For the purposes of paragraph 67(3)(g) of the Act, each of the following circumstances is prescribed in relation to an application for a government certificate in relation to fish or fish products:
 - (a) a condition or disease is present in Australian territory that is likely to affect the acceptability of the fish or fish products to the importing country, and the effects of the condition or disease have not been eliminated by a treatment or process to make the fish or fish products fit for human consumption;

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- (b) the export of the fish or fish products could result in trade in the export of goods from Australian territory being adversely affected;
- (c) the applicant for the certificate failed:
 - (i) to return a government certificate as required by section 2-18 of this instrument; or
 - (ii) to retain a government certificate in a secure place in accordance with section 11-4 of this instrument; or
 - (iii) to provide facilities and assistance to an auditor as required by section 271 of the Act.

Circumstances relating only to prescribed fish or fish products

- (2) For the purposes of paragraph 67(3)(g) of the Act and without limiting subsection (1) of this section, each of the following circumstances is prescribed in relation to an application for a government certificate in relation to prescribed fish or fish products:
 - (a) a prescribed export condition that applies in relation to the fish or fish products has not been complied with;
 - (b) the applicant for the certificate failed to comply with a direction given to the applicant under subsection 305(1) of the Act (to deal with non-compliance with the requirements of the Act);
 - (c) an export permit is not in force for the fish or fish products.

Circumstances relating only to shellfish

- (3) For the purposes of paragraph 67(3)(g) of the Act and without limiting subsections (1) and (2) of this section, the circumstance that shellfish have not been prepared in accordance with the Australian Shellfish Export Standards is prescribed in relation to an application for a government certificate in relation to prescribed fish that are shellfish or prescribed fish products containing shellfish.

Note: Other grounds for the issuing body to refuse to issue a government certificate in relation to prescribed fish or fish products are set out in paragraphs 67(3)(a) to (f) of the Act.

2-17 Changes that require holder of certificate to give additional or corrected information to issuing body

For the purposes of paragraph 74(1)(b) of the Act, each of the following changes is prescribed in relation to fish or fish products in relation to which a government certificate is in force:

- (a) there are reasonable grounds to suspect that the integrity of the fish or fish products cannot be ensured;
- (b) there are reasonable grounds to suspect that an importing country requirement relating to the fish or fish products will not be, or is not likely to be, met before the fish or fish products are imported into the importing country;
- (c) for prescribed fish or fish products—there are reasonable grounds to suspect that a prescribed export condition relating to the fish or fish products has not been complied with in circumstances where the condition should have been complied with.

2-18 Return of government certificate

- (1) For the purposes of paragraph 76(1)(a) of the Act, each of the following is a circumstance in which a government certificate in relation to fish or fish products (other than a certificate issued by electronic means) must be returned to an issuing body:
 - (a) the fish or fish products are no longer intended to be exported to the country in relation to which the certificate was issued;
 - (b) the certificate has been revoked under section 75 of the Act.
- (2) For the purposes of paragraph 76(1)(b) of the Act, the period within which a government certificate in relation to fish or fish products must be returned to an issuing body is 10 business days starting on the day the event referred to in paragraph (1)(a) or (b) of this section (as applicable) occurs.
- (3) This section does not apply in relation to a government certificate that was issued by electronic means.

Chapter 4—Registered establishments

Part 1—Requirements for registration

Division 1—Requirements relating to construction, equipment and facilities

4-1 Purpose of this Division

For the purposes of paragraphs 112(2)(c) and (f) of the Act, this Division prescribes requirements relating to the construction of an establishment and its equipment and facilities that must be met for the establishment to be registered for operations to prepare prescribed fish or fish products for export.

Note 1: The requirements in this Division also apply in relation to an application to renew the registration of the establishment (see section 4-17).

Note 2: Other requirements that must be met are provided by paragraphs 112(2)(a), (b) and (e) of the Act, and Division 2 of this Part. In addition, an approved arrangement for operations to prepare the fish or fish products for export must be in force (see paragraph 112(2)(d) of the Act and item 3 of the table in section 2-4 of this instrument).

4-2 Equipment, facilities and essential services—general

An establishment must have the buildings, equipment, facilities and essential services that are necessary to ensure that operations to prepare prescribed fish or fish products can be carried out at the establishment in accordance with the requirements of this instrument.

4-3 Measuring devices

- (1) An establishment must have accurate measuring devices to assess compliance with the requirements of this instrument.

Note: For guidance on Australian legal units of measurements and tolerances, see the *National Measurement Act 1960*. For the application of that Act in relation to contracts, dealings or transactions made or entered into in connection with the export of goods, see section 13 of that Act.

- (2) Temperature measuring devices at an establishment must:
 - (a) be able to measure the temperature of fish and fish products to an accuracy of +/- 1 °C; and
 - (b) be readily accessible in refrigeration chambers and other equipment used for controlling the temperature of fish or fish products.

4-4 Establishment (including construction)

General requirements

- (1) An establishment (including its construction) must:
 - (a) facilitate operations to prepare prescribed fish and fish products that are fit for human consumption; and
 - (b) be fit for the purpose for which it is used; and

- (c) have sufficient capacity for the maximum quantity of fish and fish products prepared there at any one time; and
 - (d) be able to be effectively cleaned and, if necessary, sanitised if there is a risk it may cause contamination of fish or fish products; and
 - (e) be able to be easily accessed, inspected and monitored.
- (2) An establishment (including its construction) and, in particular, the floors, walls and ceilings in its food handling areas, areas used for cleaning and sanitising (other than for cleaning vehicles) and areas for personal hygiene, must to the extent practicable:
- (a) not permit entry or harbourage of pests; and
 - (b) exclude dirt, dust, fumes, smoke and other contaminants; and
 - (c) minimise the accumulation of contaminating substances.

Note: **Establishment** includes a structure, building or conveyance and a place (whether or not enclosed or built on), including a place situated underground or under water (see the definitions of **establishment** and **premises** in section 12 of the Act).

Plans and specifications

- (3) An establishment and its equipment must comply with any plans and specifications that accompany the application for registration.

Immediate surrounds

- (4) Places around buildings, roads and other areas that are part of an establishment, or immediately around and serving the establishment, must:
- (a) be paved, graded, landscaped or otherwise treated to minimise the risk of dust, pests or contaminants entering food handling areas; and
 - (b) have adequate drainage.

Floors

- (5) Floors in an establishment must be constructed in a way that is appropriate for carrying out operations to prepare fish and fish products for export.
- (6) Floors in food handling areas, areas used for cleaning and sanitising (other than for cleaning vehicles) and areas for personal hygiene must:
- (a) be able to be effectively cleaned and, if necessary, sanitised if there is a risk they may cause contamination of fish or fish products; and
 - (b) be smooth and impervious; and
 - (c) have adequate drainage.
- (7) Subsection (6) does not apply to floors in a food handling area of a vessel if the area is not enclosed.
- (8) Floors in an area used for cleaning vehicles must:
- (a) be able to be effectively cleaned; and
 - (b) be impervious; and
 - (c) have adequate drainage.

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Walls and ceilings

- (9) Walls and ceilings in an establishment must be constructed:
 - (a) wherever necessary to protect fish and fish products and their ingredients from contamination; and
 - (b) in a way that is appropriate for carrying out operations to prepare fish and fish products for export.
- (10) Walls and ceilings in food handling areas, areas used for cleaning and sanitising (other than for cleaning vehicles) and areas for personal hygiene must:
 - (a) be able to be effectively cleaned and, if necessary, sanitised if there is a risk they may cause contamination of fish or fish products; and
 - (b) be smooth and impervious.
- (11) Walls and ceilings in an area used for cleaning vehicles must:
 - (a) be able to be effectively cleaned; and
 - (b) be impervious.

4-5 Fixtures, fittings and equipment

General requirements

- (1) Fixtures, fittings and equipment in an establishment (including in refrigeration chambers and storage areas) must:
 - (a) facilitate operations to prepare prescribed fish and fish products that are fit for human consumption; and
 - (b) be fit for the purpose for which they are used; and
 - (c) have sufficient capacity for the maximum quantity of fish and fish products prepared using them at any one time.

Construction

- (2) The fixtures, fittings and equipment must be constructed in a way that:
 - (a) ensures they do not cause contamination of fish or fish products; and
 - (b) allows them to be easily and effectively cleaned and, if necessary, sanitised if there is a risk they may cause contamination of fish or fish products; and
 - (c) allows adjacent floors, walls, ceilings and other surfaces to be easily and effectively cleaned; and
 - (d) allows them to be effectively accessed, inspected and monitored; and
 - (e) to the extent practicable:
 - (i) does not permit the entry or harbourage of pests; and
 - (ii) excludes dirt, dust, fumes, smoke and other contaminants; and
 - (iii) minimises the accumulation of contaminating substances.
- (3) Food contact surfaces of fixtures, fittings and equipment must:
 - (a) be able to be easily and effectively cleaned and, if necessary, sanitised if there is a risk they may cause contamination of fish or fish products; and
 - (b) be smooth and impervious; and
 - (c) be made of materials that do not cause contamination of fish or fish products.

4-6 Storage facilities for items other than fish or fish products

- (1) An establishment must have adequate facilities to store items (including chemicals, clothing and personal belongings) that could contaminate fish or fish products.
- (2) The facilities must be located where there is no risk of stored items contaminating fish or fish products.

Note: For requirements for the storage of hazardous substances, see subsection 5-9(10).

4-7 Cleaning and sanitising facilities

Buildings, equipment etc.

- (1) An establishment must have facilities appropriate to ensure the effective cleaning and sanitising of the buildings, fixtures, fittings and equipment at the establishment.
- (2) Facilities for cleaning and sanitising equipment in contact with fish and fish products must be readily accessible by food handlers where the equipment is used.

Hand washing facilities

- (3) An establishment must have hand washing facilities.
- (4) The hand washing facilities must be located in or adjacent to areas where food handlers work if there is a risk that their hands may cause contamination of fish or fish products.
- (5) The hand washing facilities must:
 - (a) have an adequate supply of warm, or hot and cold, potable water over a sink equipped with hands-free operated taps; and
 - (b) have an adequate supply of suitable hand sanitising preparation; and
 - (c) have suitable and sufficient hygienic means of drying hands; and
 - (d) be clearly identified as for use for washing hands, arms and face only.
- (6) However, hands-free operated taps are not required in an area of an establishment used only for:
 - (a) packing live fish (other than shellfish); or
 - (b) growing and holding live fish before packing.

4-8 Amenities

- (1) An establishment must have adequate and conveniently located amenities for the use of food handlers.
- (2) The amenities must:
 - (a) be physically separated from food handling areas and must not open directly onto these areas; and
 - (b) be well lit and ventilated; and
 - (c) not be a source of contamination of fish or fish products.

Chapter 4 Registered establishments

Part 1 Requirements for registration

Division 1 Requirements relating to construction, equipment and facilities

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- (3) Hand washing facilities must be provided in or adjacent to toilets.
- (4) The hand washing facilities must:
 - (a) have an adequate supply of warm, or hot and cold, potable water over a sink equipped with hands-free operated taps; and
 - (b) have an adequate supply of suitable hand sanitising preparation; and
 - (c) have suitable and sufficient hygienic means of drying hands.

4-9 Essential services

Effluent and waste

- (1) An establishment must have a sewerage and waste system that:
 - (a) effectively disposes of and, if necessary, treats all sewage and waste (including during peak load); and
 - (b) prevents the sewage or waste polluting the establishment's water supply or contaminating fish or fish products; and
 - (c) ensures that discharge is contained and directed to the drainage system.

Example: For the purposes of paragraph (c), discharge from refrigeration would be directed to the drainage system.

Storage of waste and inedible material

- (2) An establishment must have designated areas for the separation and storage of waste and inedible material before their removal from the establishment.
- (3) The facilities and containers used for the storage of waste and inedible material must:
 - (a) adequately contain the volume and type of waste and inedible material at the establishment; and
 - (b) prevent access to the waste or inedible material by pests; and
 - (c) prevent the waste or inedible material polluting the establishment's water supply or contaminating fish or fish products; and
 - (d) be clearly identified as for use for storage of waste and inedible material only.

Lighting

- (4) An establishment must have a lighting system that provides sufficient natural or artificial light for carrying out operations to prepare fish or fish products for export.

Note: For guidance on lighting, see:

- (a) Australian/New Zealand Standard AS/NZS 1680.1:2006 *Interior and workplace lighting, Part 1: General principles and recommendations*, published jointly by, or on behalf of, Standards Australia and Standards New Zealand, as in force at the commencement of this instrument; and
- (b) Australian/New Zealand Standard AS/NZS 1680.2.4:1997 *Interior lighting, Part 2.4: Industrial tasks and processes*, published jointly by, or on behalf of, Standards Australia and Standards New Zealand, as in force at the commencement of this instrument.

- (5) The lighting system must not be a source of contamination of fish or fish products.

Ventilation

- (6) An establishment must have adequate ventilation (natural or mechanical):
- (a) to effectively minimise the risk of airborne contamination (including steam, smoke and condensation) of fish or fish products; and
 - (b) where appropriate, to control ambient temperature.

Water supply—general

- (7) An establishment must have a supply of potable water that is available for use at a volume, pressure and temperature that is adequate for the purposes for which it is used.
- (8) Potable and non-potable water must be supplied in separate lines (including outlets) that are clearly identified as being for use for potable or non-potable water.
- (9) Any recirculated water at the establishment must have a separate distribution system that is clearly identified as being for recirculated water.

Water supply—operational hygiene

- (10) The reticulation system at an establishment must prevent the back siphonage of used or contaminated water.
- (11) Non-potable water reticulation systems for an establishment must not contaminate the potable water reticulation systems for the establishment.

4-10 Fishing vessels etc.

- (1) Subsections 4-7(3) to (5), section 4-8 and paragraph 4-9(1)(c) do not apply to:
- (a) an establishment that is a fishing vessel; or
 - (b) an establishment that is used only for packing live fish (other than shellfish) or for growing and holding live fish before packing.
- (2) An establishment referred to in paragraph (1)(a) or (b) must have:
- (a) amenities, including hand washing facilities; and
 - (b) drainage;
- sufficient to maintain the fitness for human consumption of fish or fish products on or at the establishment.

Division 2—Other requirements

4-11 Purpose of this Division

For the purposes of paragraph 112(2)(f) of the Act, this Division prescribes other requirements that must be met for an establishment to be registered for operations to prepare prescribed fish or fish products for export.

4-12 Operations must be carried out in a way that will ensure requirements of the Act are met

- (1) Operations at an establishment to prepare prescribed fish or fish products for export must be carried out in a way that will ensure that the requirements of the Act are complied with.
- (2) If operations other than export operations are carried out at the establishment, those operations must not affect the hygienic preparation of prescribed fish or fish products for export.

Part 2—Conditions of registration

4-13 Purpose of this Part

For the purposes of paragraph 113(1)(b) of the Act, this Part prescribes conditions of the registration of an establishment for operations to prepare prescribed fish or fish products for export.

Note 1: If the registration of the establishment is renewed, these conditions also apply in relation to the renewed registration of the establishment (see paragraph 118(b) of the Act).

Note 2: The occupier of a registered establishment may commit an offence or be liable to a civil penalty if a condition of the registration of the establishment is contravened (see section 144 of the Act).

4-14 Requirements for registration continue to be met

The requirements for registration of an establishment prescribed by Part 1 of this Chapter must continue to be met in relation to the establishment after it is registered.

4-15 Other operational hygiene requirements

Live animals not permitted

- (1) The occupier of a registered establishment must not permit live animals (other than live fish for preparation as food) to enter food handling areas at the establishment.

Notifiable diseases

- (2) If the occupier of a registered establishment is aware that fish or fish products at the establishment are, or are derived from, fish that is affected by or is suspected of being affected by a notifiable disease, the occupier must notify an authorised officer immediately after becoming aware.
- (3) If the occupier gives a notification under subsection (2) orally, the occupier must, as soon as practicable after giving the notification, also give the notification in writing.

Part 3—Renewal of registration

4-16 Period within which application to renew registration must be made

For the purposes of paragraph 116(4)(a) of the Act, the period within which an application to renew the registration of an establishment must be made is the period of 60 days starting on the day that is 180 days before the expiry date for the registration.

Note 1: For example, if the registration of an establishment expires on 8 July in a year (other than a leap year), an application for renewal can be made at any time between 9 January and 10 March in that year.

Note 2: An application to renew the registration of an establishment will only need to be made if there is an expiry date for the registration (see subsection 116(1) of the Act).

4-17 Requirements for renewal of registration

For the purposes of paragraphs 117(2)(e) and (g) of the Act, the requirements prescribed by Part 1 of this Chapter are prescribed in relation to an establishment that is registered to prepare prescribed fish or fish products for export.

Note: Other requirements are provided by paragraphs 117(2)(a) to (d) of the Act. In addition, an approved arrangement for operations to prepare the fish or fish products for export must be in force (see paragraph 117(2)(f) of the Act and item 3 of the table in section 2-4 of this instrument).

Part 4—Suspension of registration

4-18 Request by occupier for suspension

- (1) For the purposes of subsection 125(2) of the Act, a request may be made under subsection 125(1) of the Act by the occupier of a registered establishment to suspend the registration of the establishment in relation to operations (the **relevant operations**) to prepare prescribed fish or fish products for export if:
- (a) the occupier of the establishment is undertaking, or proposes to undertake, renovations or maintenance of the establishment that prevent, or would prevent, the relevant operations being carried out; or
 - (b) the relevant operations cannot be carried out in circumstances outside the control of the occupier.

Examples: For the purposes of paragraph (b), circumstances include flood, fire, disease, oil spill or other disaster, roadworks restricting access to the establishment and extended seasonal closures.

- (2) Paragraph (1)(b) of this section does not apply if the circumstances relate to a notifiable disease or any other condition or disease that is likely to affect the fitness for human consumption of fish or fish products or the acceptability of fish or fish products to an importing country.
- (3) Subsection (1) of this section does not apply if, before the request was made, the Secretary:
- (a) had given the occupier of the establishment a notice under subsection 127(2) of the Act in relation to the registration of the establishment and the relevant operations; and
 - (b) had not decided whether to suspend the registration or not.

4-19 Other grounds for suspension

For the purposes of paragraph 127(1)(k) of the Act, it is a ground for suspension of the registration of an establishment that:

- (a) prescribed fish or fish products are being prepared at the establishment under unhygienic conditions or in an unhygienic way; or
- (b) an assessment of prescribed fish or fish products at the establishment is not possible.

Part 5—Matters relating to applications

4-20 Application of this Part

This Part applies in relation to the following applications:

- (a) an application under section 111 of the Act to register an establishment for operations to prepare prescribed fish or fish products for export;
- (b) an application under section 116 of the Act to renew the registration of an establishment for operations to prepare prescribed fish or fish products for export;
- (c) an application under section 120 of the Act to do any of the following in relation to an establishment that is registered for operations to prepare prescribed fish or fish products for export:
 - (i) vary the registration, or the particulars relating to the registration, of the establishment;
 - (ii) approve an alteration of the establishment;
 - (iii) vary the conditions of the registration of the establishment.

4-21 Initial consideration period

For the purposes of subsection 379(3) of the Act, the initial consideration period for an application is 120 days.

Note: The consideration period for an application starts on the day after the day the Secretary receives the application (see subsection 379(4) of the Act).

4-22 Period within which request relating to application must be complied with

For the purposes of paragraph 379(10)(b) of the Act, the period of 6 months is prescribed.

Chapter 5—Approved arrangements

Part 1—Requirements for approval

5-1 Purpose of this Part

For the purposes of paragraph 151(2)(d) of the Act, this Part prescribes other requirements that must be met for approval of a proposed arrangement for a kind of export operations in relation to prescribed fish or fish products.

5-2 Proposed arrangement for operations to prepare prescribed fish or fish products

- (1) This section applies in relation to a proposed arrangement for operations to prepare prescribed fish or fish products for export at a registered establishment.

General requirements

- (2) The proposed arrangement must record that the applicant for approval of the arrangement is committed:
- (a) to meeting the objects referred to in section 3 of the Act that are applicable to the operations and the prescribed fish or fish products covered by the arrangement; and
 - (b) to complying with the requirements of the Act in relation to those operations.
- (3) The proposed arrangement must cover each stage of the operations.
- (4) The proposed arrangement must record details of the following matters:
- (a) the applicant's management practices;
 - (b) the organisational structure of the applicant;
 - (c) the resources to be provided to carry out the operations covered by the arrangement;
 - (d) the personnel who are to carry out the operations and the training those personnel receive;
 - (e) the system of controls to be implemented to ensure that the conditions prescribed by Divisions 2 to 8 of Part 2 of this Chapter will be complied with in relation to the operations covered by the arrangement;
 - (f) any other system of controls to be implemented to ensure that there will be reasonable grounds for issuing:
 - (i) an export permit for prescribed fish or fish products covered by the arrangement; or
 - (ii) a government certificate in relation to prescribed fish or fish products covered by the arrangement.
- (5) The matters required to be recorded in the proposed arrangement by paragraphs (4)(a) to (d) must be appropriate to ensure compliance with the requirements of the Act and that importing country requirements in relation to the operations covered by the arrangement are met.

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- (6) If compliance with the requirements of the Act (not including section 5-7 of this instrument) will not be sufficient to ensure that all importing country requirements relating to the operations and the prescribed fish or fish products covered by the proposed arrangement will be met, the arrangement must:
- (a) identify each importing country requirement that will not be met; and
 - (b) record details of the system of controls to be implemented to ensure that each importing country requirement referred to in paragraph (a) will be met.

Note: It is a condition of an approved arrangement for export operations in relation to prescribed fish or fish products that all importing country requirements relating to export operations carried out in relation to the fish or fish products in accordance with the arrangement, and the fish or fish products, are met (see section 5-7).

Requirement for HACCP plan

- (7) The proposed arrangement must provide for the implementation of an HACCP plan for each stage of the operations to prepare the prescribed fish or fish products for export.
- (8) The HACCP plan must:
- (a) for each stage of the operations—identify the potential hazards that may reasonably be expected to occur; and
 - (b) identify the means of control for each potential hazard; and
 - (c) for each significant hazard that is identified—identify:
 - (i) the critical control points; and
 - (ii) the critical limits; and
 - (iii) the procedures to be used to monitor the hazard to ensure compliance with each critical limit, including the frequency with which the procedures are to be carried out and the persons, or class of persons, who are to carry out the procedures; and
 - (iv) the corrective action to be taken if a critical limit is exceeded, including action to address the exceeding of the critical limit and action to ensure it does not happen again; and
 - (v) the procedures to be used to assess the effectiveness of action referred to in subparagraph (iv);
 - (d) identify procedures to be used to verify compliance with the HACCP plan and the frequency with which the procedures are to be carried out; and
 - (e) provide for records to be made and documents to be kept to demonstrate compliance with the HACCP plan and its effectiveness.
- Note: For guidance, see the Codex requirements for HACCP plans which set out the following 7 principles: conduct a hazard analysis; identify critical control points; establish critical limits; establish monitoring procedures; establish corrective actions; establish verification procedures; keep records. A flow chart may be used.
- (9) Subsection (8) does not apply to a potential hazard that is controlled by meeting the operational hygiene requirements under section 5-4.
- (10) For the purposes of paragraph (8)(c), a hazard is a **significant hazard** for operations in relation to fish or fish products if it (alone or in combination with other hazards) is of such a nature that its elimination, or control or reduction to

an acceptable level, is essential for operations to prepare fish or fish products that are fit for human consumption.

5-3 Equipment

The proposed arrangement must provide for measures to ensure that measuring devices used for the purposes of complying with the requirements of Part 2 of this Chapter are accurately calibrated to assess compliance with those requirements.

5-4 Operational hygiene

- (1) This section applies in relation to a proposed arrangement for operations to prepare prescribed fish or fish products at a registered establishment.

Establishment and its equipment

- (2) The proposed arrangement must provide for measures in relation to the establishment and its equipment to ensure that fish and fish products at the establishment are not contaminated by environmental contamination (including airborne or waterborne contamination).

Hygiene controls for processing

- (3) The proposed arrangement must provide for measures:
 - (a) to protect the fish or fish products and their ingredients from contamination by any thing or activity; and
 - (b) to minimise the growth in the fish or fish products and their ingredients of pathogens that could adversely affect the export of the fish or fish products as food that are fit for human consumption given the conditions under which they are to be stored, handled and transported; and
 - (c) to ensure that the fitness for human consumption of the fish and fish products and their ingredients is not otherwise adversely affected.
- (4) Without limiting subsection (3), the proposed arrangement must provide for measures to prevent fish or fish products that are not fit for human consumption from being a source of contamination for prescribed fish or fish products or their ingredients.
- (5) Also without limiting subsection (3), the proposed arrangement must provide for measures to validate the effectiveness of temperature controls required under Part 2 of this Chapter.

Evaluation of fitness for consumption

- (6) The proposed arrangement must provide for procedures to evaluate the fitness for human consumption of:
 - (a) all fish and fish products (including returned products) received at the establishment; and
 - (b) all ingredients received at the establishment; and
 - (c) all fish and fish products prepared at the establishment for export as food.

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Requirement relating to water

- (7) The proposed arrangement must provide for all water (including used water, recirculated water and ice) used at the establishment to be potable unless the water is used only in circumstances (specified in the arrangement) where there is no risk of the water coming into contact with or contaminating fish or fish products.
- (8) However, the proposed arrangement may provide for clean sea water to be used at the establishment in relation to operations to prepare fish and fish products (other than crocodile meat).
- (9) If subsection (8) applies, the approved arrangement must provide for measures to ensure that the use of clean sea water does not adversely affect the fitness for human consumption of the fish or fish products.
- (10) The proposed arrangement must record details of the system of controls (including in relation to treatment, testing and verification) to be implemented to ensure that water used at the establishment is potable.
- (11) The proposed arrangement must provide for the analysis of potable water for the presence of *E. coli* to be performed by a laboratory accredited by NATA to perform the analysis.

5-5 Identification, traceability and integrity

The proposed arrangement must provide for measures for the identification, traceability and integrity of the fish and fish products that ensure that the fish or fish products can be identified, traced and, if necessary, recalled.

Part 2—Conditions of approved arrangement

Division 1—Purpose of this Part

5-6 Purpose of this Part

- (1) For the purposes of paragraph 152(1)(b) of the Act, this Part prescribes conditions of an approved arrangement for a kind of export operations carried out in relation to prescribed fish or fish products.
- (2) A provision of this Part applies in relation to an approved arrangement referred to in subsection (1) if the provision relates to a kind of export operations covered by the arrangement.

Note 1: If an approved arrangement is renewed, the conditions also apply in relation to the renewed approved arrangement (see paragraph 157(1)(b) of the Act).

Note 2: The holder of an approved arrangement may commit an offence or be liable to a civil penalty if a condition of the approved arrangement is contravened (see section 184 of the Act).

Division 2—General

5-7 Importing country requirements must be met

An approved arrangement must ensure that all importing country requirements relating to the following are met:

- (a) export operations carried out in relation to prescribed fish or fish products in accordance with the arrangement;
- (b) the prescribed fish or fish products in relation to which the export operations are carried out.

Note: For guidance on importing country requirements for specific importing countries, see MICoR.

Division 3—Operational hygiene

5-8 Purpose of this Division

This Division prescribes conditions of an approved arrangement for export operations to prepare prescribed fish or fish products at a registered establishment.

Subdivision A—Prescribed fish and fish products—general

5-9 Hygiene control—establishment and its equipment

Cleanliness

- (1) A registered establishment must be kept clean and free of the following:
 - (a) garbage (other than in garbage containers);
 - (b) recycled matter (other than in recycling containers);
 - (c) food waste (other than in a designated area for the separation and storage of waste and inedible material before their removal from the establishment);
 - (d) dirt;
 - (e) grease;
 - (f) other visible matter that could contaminate prescribed fish or fish products.
- (2) Floors, walls and ceilings in the following areas of the establishment must be cleaned and sanitised whenever it is necessary to prevent the contamination of prescribed fish or fish products:
 - (a) food handling areas;
 - (b) areas used for cleaning and sanitising equipment and protective clothing;
 - (c) areas for personal hygiene.
- (3) Whenever it is necessary to prevent the contamination of prescribed fish or fish products, the following must be cleaned and sanitised:
 - (a) fixtures, fittings and equipment (other than single use items);
 - (b) food contact surfaces of fixtures, fittings and equipment.
- (4) Equipment used for carrying out operations to prepare prescribed fish or fish products at the establishment must be kept clean and free of the following:
 - (a) food waste;
 - (b) dirt;
 - (c) grease;
 - (d) other visible matter that could contaminate the fish or fish products.
- (5) Places around buildings, roads and other areas that are part of the establishment or immediately around and serving the establishment must be cleaned to the extent necessary to ensure they are not a source of contamination of prescribed fish or fish products.

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Maintenance

- (6) The establishment's buildings, fixtures and fittings must be maintained in the state of repair necessary to facilitate operations to prepare prescribed fish and fish products that are fit for human consumption.
- (7) Equipment at the establishment must be maintained in the state of repair and working order necessary to facilitate operations to prepare prescribed fish and fish products that are fit for human consumption and having regard to its use.

Pests

- (8) The entry of pests into the establishment and its equipment must, to the extent practicable, be prevented.
- (9) The harbourage of pests in the establishment and its equipment must be prevented.

Hazardous substances

- (10) Hazardous substances at the establishment must:
 - (a) be stored in containers that:
 - (i) are labelled with the name of the substance and a warning about its toxicity and use; and
 - (ii) are not used for any purpose other than the storage of hazardous substances; and
 - (b) not be a source of contamination for prescribed fish or fish products.
- (11) Any other substances that may be a source of contamination for prescribed fish or fish products must not be used or stored in food handling areas other than as necessary for hygienic or preparation purposes.

5-10 Measuring devices

Measuring devices used at a registered establishment for the purposes of meeting a requirement of this Part must be accurately calibrated.

5-11 Hygiene control—processing

- (1) Refrigeration chambers at a registered establishment must achieve the temperatures required under this Part for chilling, freezing, maintaining, thawing and tempering prescribed fish and fish products, taking account of the maximum quantity of fish or fish products to be chilled, frozen, maintained, thawed or tempered at any one time using the refrigeration chambers.

Note: The approved arrangement for operations to prepare the fish or fish products must provide for measures to validate the effectiveness of the temperature controls (see subsections 5-18(9), 5-19(2) and (4) and 5-34(4)).

- (2) Ingredients for prescribed fish or fish products must:
 - (a) be fit for the purpose for which they are used; and
 - (b) be labelled, stored and handled in a way that ensures their identity can be ascertained.

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- (3) Water required under this Part to be potable must contain no detectable *E. coli* for every 100 millilitres of water tested.
 - (4) Steam used in contact with prescribed fish or fish products or food contact surfaces must be free from substances that may:
 - (a) have the potential to cause harm to human health; and
 - (b) be a source of contamination for the fish or fish products.
 - (5) Compressed air and other processing gases that come into contact with prescribed fish or fish products or food contact surfaces must be free from substances that may:
 - (a) have the potential to cause harm to human health; and
 - (b) be a source of contamination for the fish or fish products.

5-12 Personal hygiene and health

General

- (1) A person known or suspected to be suffering from a medical condition, or to be a carrier of a medical condition (other than *Staphylococcus aureus*), likely to be transmitted through food must not be in any food handling area of a registered establishment in any capacity in which there is a risk of the person directly or indirectly contaminating prescribed fish or fish products with pathogens.
- (2) If a person known or suspected to be suffering from a medical condition, or to be a carrier of a medical condition (other than *Staphylococcus aureus*), likely to be transmitted through food:
 - (a) is at the establishment; or
 - (b) suspects that the medical condition may have resulted in contamination of prescribed fish or fish products at the establishment;the person must tell a person who manages or controls operations to prepare fish or fish products at the establishment about the medical condition immediately.
- (3) A person in a food handling area must:
 - (a) take all practicable measures to ensure the person's body, anything from the person's body and anything the person is wearing do not contaminate prescribed fish or fish products or food contact surfaces; and
 - (b) avoid unnecessary contact with prescribed fish or fish products.

Note: A visitor to a food handling area is a person in the food handling area.

- (4) A person in a food handling area must not do anything that could result in contamination of prescribed fish or fish products in the area or that is likely to adversely affect the fitness for human consumption of prescribed fish or fish products in the area.

Examples: Eating, smoking, chewing, spitting, sneezing or coughing over unprotected fish or fish products or food contact surfaces.
- (5) A person in a food handling area must at all times wear protective clothing (including a hair covering) and footwear that are:
 - (a) suitable to prevent anything from the person's body contaminating prescribed fish or fish products in the area; and

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(b) clean, sanitary and in good repair.

(6) Personal belongings and clothing must not be stored in food handling areas.

Food handlers

(7) A food handler who has a medical condition must take all practical measures to prevent the condition resulting in contamination of prescribed fish or fish products or their ingredients.

(8) Without limiting subsection (7), coverings used for medical conditions must:

(a) be effective in preventing contamination of prescribed fish or fish products;
and

(b) be waterproof, firmly secured and conspicuous in colour.

(9) A food handler must wash (using a sanitising agent) and dry thoroughly the food handler's hands:

(a) on entering a food handling area of the establishment; and

(b) immediately after using the toilet; and

(c) after touching the food handler's nose or mouth; and

(d) whenever necessary to avoid contaminating prescribed fish or fish products at the establishment;

whether or not the food handler has been wearing, or is intending to wear, gloves.

Subdivision B—Crocodiles and crocodile meat

5-13 Hygiene control—equipment

Without limiting section 5-9, equipment used for killing, bleeding, skinning or eviscerating a crocodile, or removing meat from a crocodile carcase, must be cleaned and sanitised whenever necessary to ensure that carcasses and carcase parts are not a source of contamination for other carcasses or carcase parts.

5-14 Personal hygiene

Without limiting section 5-12, a food handler who skins or eviscerates a crocodile, or removes meat from a crocodile carcase, must wash (using a sanitising agent) and dry thoroughly the food handler's hands before handling another crocodile carcase.

Division 4—Preparation and transport

Subdivision A—Prescribed fish and fish products—general

5-15 Fish or fish products not to be prepared for export as food

- (1) Fish must not be prepared for export as food if, at the time of harvest, the fish are dead (other than because of the method of taking the fish).
- (2) Fish or fish products must not be prepared for export as food if a condition or disease is likely to affect the fitness for human consumption of the fish or fish products.
- (3) Subsection (2) does not apply if the fish or fish products can be treated to eliminate the effects of the condition or disease or make them fit for human consumption.

5-16 Sourcing fish and fish products

- (1) Prescribed fish and fish products must not be taken from, or washed using water from, areas where there are reasonable grounds to believe that either of the following are present and could result in unacceptable levels in the fish or fish products:
 - (a) potentially harmful pathogens;
 - (b) potentially harmful substances.Examples: Pesticides, fungicides, heavy metals, natural toxicants or other contaminants and potentially harmful substances.
- (2) Prescribed fish must be taken in a way that minimises the taking of fish likely to be affected by ciguatoxin.
Examples: Controls on fish species, fish size and location of harvesting.
- (3) Fish and fish products sourced in Australian territory that are to be prepared for export as food must be sourced only from:
 - (a) a registered establishment; or
 - (b) an establishment in relation to which an exemption from the requirement to be registered to carry out export operations in relation to the fish or fish products is in force under Part 2 of Chapter 2 of the Act; or
 - (c) a catcher boat; or
 - (d) for fish or fish products other than crocodiles or crocodile meat—an establishment where export operations referred to in subsection 2-4(3) of this instrument are carried out and where no other operations to prepare prescribed fish or fish products for export are carried out; or
 - (e) for crocodiles or crocodile meat—an establishment where operations to kill or bleed crocodiles are carried out and where no other operations to prepare prescribed fish or fish products for export are carried out.
- (4) Prescribed fish or fish products (other than crocodiles or crocodile meat) that are to be sourced directly from an establishment referred to in paragraph (3)(c) or (d) must be sourced only from an establishment with:

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- (a) disease management controls that ensure that only healthy fish are taken for food; and
 - (b) measures that ensure that:
 - (i) fish are not given feed or treated with a substance that could adversely affect the fitness for human consumption of fish and fish products; and
 - (ii) the taking, holding, growing, relaying, killing, bleeding, dismembering, sorting, grading, washing, icing or salting for transport of fish is done under conditions that ensure that the fitness for human consumption of fish and fish products is not adversely affected; and
 - (iii) as soon as practicable after being taken, fish are placed under temperature controls that minimise the growth of pathogens that could adversely affect the fitness for human consumption of fish or fish products; and
 - (iv) in the case of shellfish—the harvester of the shellfish has approval (however expressed) from the State or Territory authority that is responsible for regulating the growing and harvesting of shellfish.
- (5) Without limiting subsection (4), prescribed fish or fish products for that are to be sourced directly from a catcher boat must be sourced only from a catcher boat that:
- (a) is constructed and maintained in a way that is appropriate for the operations in relation to fish or fish products for which it is used; and
 - (b) is able to be effectively cleaned; and
 - (c) to the extent practicable, does not permit the entry or harbourage of pests; and
 - (d) has the necessary facilities, equipment and procedures to:
 - (i) place fish or fish products under the temperature controls required by this Part; and
 - (ii) prevent the contamination of fish or fish products during preparation and transport on the catcher boat; and
 - (iii) ensure that the fitness for human consumption of the fish and fish products is not otherwise adversely affected.
- (6) Crocodiles to be killed for crocodile meat, or crocodile meat, for export as food that are to be sourced, directly from an establishment referred to in paragraph (3)(e) must be sourced only from an establishment with:
- (a) disease management controls that ensure that only healthy crocodiles are taken for food; and
 - (b) measures that ensure that:
 - (i) crocodiles are not given feed or treated with a substance that could adversely affect the fitness for human consumption of crocodile meat; and
 - (ii) the killing and bleeding of crocodiles is done under conditions that ensure that the fitness for human consumption of crocodile meat is not adversely affected; and
 - (iii) as soon as practicable after the killing of the crocodile from which the crocodile meat is derived, the meat is placed under temperature

controls that minimise the growth of pathogens that could adversely affect the fitness for human consumption of the meat.

Traceability

- (7) Without limiting subsection (3), (4), (5) or (6), prescribed fish or fish products, or fish or fish products that are to be prepared for export as food, and their ingredients must be sourced only from a supplier with inventory and tracing systems to ensure that the fish or fish products and their ingredients are traceable and can be recalled if required.
- (8) The occupier of an establishment sourcing fish or fish products or their ingredients from an establishment referred to in subsection (4) or (6) must make records of each supplier of the fish or fish products and their ingredients.

Note: The occupier of a registered establishment must retain each record made under this subsection for 3 years (see subsection 11-7(2)).

5-17 Notifiable diseases

- (1) If the holder of an approved arrangement for operations to prepare prescribed fish or fish products for export at a registered establishment is aware that fish or fish products at the establishment are, or are derived from, fish that are affected by, or reasonably suspected to be affected by, a notifiable disease, the holder must:
 - (a) notify an authorised officer immediately; and
 - (b) not deal with the fish or fish products further for export as food without the written approval of an authorised officer.
- (2) If the holder gives a notification under paragraph (1)(a) orally, the holder must, as soon as practicable after giving the notification, also give the notification in writing.

5-18 Temperature controls for preparing prescribed fish or fish products

- (1) Prescribed fish (other than crocodiles) must be placed under temperature controls as soon as practicable after the fish are harvested.

Note: Crocodiles from which crocodile meat for export as food is to be derived must be placed under temperature controls as soon as practicable after they are killed (see subsection 5-34(1)).

Chilling

- (2) Prescribed fish and fish products that are to be chilled must:
 - (a) be cooled to a temperature of 5 °C or cooler; or
 - (b) if the approved arrangement for operations to prepare the fish or fish products provides for different temperature controls for chilling the fish or fish products—be cooled in accordance with those controls.
- (3) For the purposes of subsection (2), the fish or fish products must be cooled quickly enough to minimise the growth of pathogens that could adversely affect the fitness for human consumption of the fish or fish products.

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- (4) The approved arrangement for operations to prepare the fish or fish products must provide for measures to validate the effectiveness of:
- (a) the rate of cooling of the fish or fish products; and
 - (b) if paragraph (2)(b) applies—the temperature controls referred to in that paragraph;
- in minimising the growth of pathogens that could adversely affect the fitness for human consumption of the fish or fish products.

Freezing

- (5) Prescribed fish or fish products (other than crocodile meat) that are to be frozen must be hard frozen.

Note: For requirements for freezing crocodile meat, see subsections 5-34(5) to (7).

- (6) For the purposes of subsection (5), achieving the temperature required for the fish or fish products to be hard frozen must be done quickly enough to minimise the growth of pathogens that could adversely affect the fitness for human consumption of the fish or fish products.
- (7) The approved arrangement for operations to prepare the fish or fish products must provide for measures to validate the effectiveness of the rate of achieving the required temperature.

Thawing and tempering

- (8) Prescribed fish or fish products must be thawed and tempered under temperature controls that minimise the growth of pathogens that could adversely affect the fitness for human consumption of the fish or fish products.
- (9) The approved arrangement for operations to prepare the fish or fish products must provide for measures to validate the effectiveness of the temperature controls in minimising the growth of pathogens that could adversely affect the fitness for human consumption of the fish or fish products.

5-19 Temperature controls for storing, handling, loading and transporting prescribed fish or fish products

Shelf-stable prescribed fish or fish products

- (1) Shelf-stable prescribed fish or fish products must be stored, handled, loaded and transported at the temperature required under the approved arrangement for operations to prepare the fish or fish products for export.
- (2) The approved arrangement must provide for measures to validate the effectiveness of the temperature controls in minimising the growth of pathogens that could adversely affect the fitness for human consumption of the fish or fish products.

Prescribed fish or fish products other than shelf-stable fish or fish products

- (3) Prescribed fish or fish products (other than shelf-stable fish or fish products) must be stored, handled, loaded and transported at:

- (a) the temperatures required for chilling or freezing the fish or fish products under section 5-18 or 5-34; or
 - (b) if the approved arrangement for operations to prepare the fish or fish products provides for different temperatures for storing, handling, loading and transporting the fish or fish products—those temperatures.
- (4) If paragraph (3)(b) applies, the approved arrangement must provide for measures to validate the effectiveness of the temperature controls in minimising the growth of pathogens that could adversely affect the fitness for human consumption of the fish or fish products.

5-20 Preserving prescribed fish and fish products

- (1) Subject to any other requirements of this Part, a process applied to prescribed fish or fish products for the purpose of extending their shelf life must ensure the safety of the fish or fish products by:
- (a) destroying or preventing the growth of pathogens; or
 - (b) reducing the growth of pathogens to a level that ensures that the microbiological safety of the fish and fish products is not adversely affected.
- (2) The approved arrangement for operations to prepare the fish or fish products for export must provide for measures to validate the effectiveness of the process in ensuring the safety of the fish or fish products as referred to in paragraphs (1)(a) and (b).

5-21 Thermal processing of canned prescribed fish or fish products

- (1) Subject to any other requirement in the approved arrangement for operations to prepare the fish or fish products, canning of prescribed fish or fish products must result in fish or fish products that are commercially sterile.
- (2) For canning of low acid prescribed fish or fish products, the approved arrangement for operations to prepare the fish or fish products for export must provide for measures to validate the effectiveness of the process resulting in fish or fish products that are commercially sterile.
- (3) Before a thermal process designed from simulated manufacturing conditions is used for canning prescribed fish or fish products, the results of the process must be verified in the actual production of canned fish or fish products:
- (a) using the thermal processing equipment to be used for canning the fish or fish products; and
 - (b) under the commercial operating conditions under which the canning is to take place.
- (4) The canning process and canning materials used must prevent contamination affecting the contents of the can.
- (5) Cans to be used for thermal processing must be inspected and evaluated in accordance with the Codex requirements.

Note: See section 7.4.8 of Volume 1 of the Codex (*Recommended Internal Code of Hygiene Practice for Low-Acid and Acidified Low-Acid Canned Foods*) CAC/RCP 23-1979.

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- (6) After thermal processing, the cans must be cooled and handled in a way that prevents the introduction of pathogens that could affect the commercial sterility of the contents of the can.
- (7) If, in accordance with the approved arrangement for operations to prepare the fish or fish products, the water used for cooling canned fish or fish products is made potable by chlorination, the water must show a measurable free residual chlorine level after contact with the cans.
Note: For requirements for water to be potable, see subsections 5-4(7) and (8).
- (8) Cans that have undergone thermal processing must be identified and held separately from cans that have not undergone thermal processing.

5-22 Packaging and identification

- (1) Packaging, labels and other materials used to package or identify prescribed fish or fish products must:
 - (a) be fit for the purpose for which they are used; and
 - (b) not adversely affect the fitness for human consumption of the fish or fish products; and
 - (c) for packaging—effectively protect the fish or fish products from contamination in the conditions under which they are to be stored, handled, loaded and transported.
- (2) The way that prescribed fish or fish products are packaged, labelled and identified must not adversely affect the fitness for human consumption of the fish or fish products.

5-23 Storage, handling and loading

- (1) Prescribed fish or fish products must be stored, handled and loaded in a way that ensures:
 - (a) they are protected from the likelihood of contamination; and
 - (b) the conditions (including humidity and atmosphere) under which they are stored, handled and loaded do not adversely affect their fitness for human consumption.
- (2) Prescribed fish or fish products must not be loaded (including loaded for export) into or onto a conveyance unless the conveyance (including the food carrying compartment), the container system unit and the equipment used for loading comply with the applicable requirements of this Part.

5-24 Container system units and food carrying compartments of vehicles—construction etc.

- (1) Container system units and the food carrying compartments of vehicles used to transport prescribed fish or fish products must be constructed:
 - (a) to protect the fish or fish products if there is a likelihood of their being contaminated during transport; and
 - (b) so that they can be effectively cleaned.

- (2) The food contact surfaces of container system units and food carrying compartments must be able to be easily and effectively cleaned and, if necessary, sanitised if there is a risk they may cause contamination of prescribed fish or fish products.
- (3) The food contact surfaces of container system units and food carrying compartments must be effectively constructed, insulated and equipped to maintain prescribed fish or fish products at the temperatures required by this Part.
- (4) However, a food carrying compartment need not meet the requirements referred to in subsection (1) or (3) if the fish or fish products are transported in a container system unit that meets the requirements.

5-25 Vehicles, container system units etc.—hygiene control

- (1) The following must be cleaned and sanitised whenever necessary to prevent the contamination of prescribed fish or fish products:
 - (a) container system units, food carrying compartments and vehicles used to transport prescribed fish and fish products;
 - (b) equipment used to handle prescribed fish and fish products during loading and transport.
- (2) The following must be maintained in a good state of repair and working order to the extent necessary to ensure that the fitness for human consumption of prescribed fish and fish products is not adversely affected during transport:
 - (a) container system units, food carrying compartments and vehicles used to transport prescribed fish and fish products;
 - (b) equipment used to handle prescribed fish and fish products during loading and transport.

5-26 Transport

- (1) Prescribed fish and fish products must be transported under temperature controls that ensure that:
 - (a) they are maintained during transportation in accordance with the applicable requirements of this Part; and
 - (b) live fish are maintained in a healthy condition.

Note: See, for example, section 5-19.

- (2) Prescribed fish and fish products must be transported under any other conditions necessary to ensure that their fitness for human consumption is not adversely affected during transport.

5-27 Identification as not for export as food—fitness for human consumption etc.

- (1) Fish and fish products that are not fit for human consumption (other than manufacturing grade fish or fish products) must:
 - (a) be identified as not for export as food; and

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- (b) be kept in a way that ensures they are not a source of contamination of prescribed fish and fish products; and
 - (c) either:
 - (i) be disposed of so that they do not contaminate prescribed fish or fish products, their ingredients or the water supply; or
 - (ii) be treated to make them fit for human consumption.
- (2) Manufacturing grade fish and fish products that are not fit for human consumption must:
- (a) be identified as manufacturing grade and not fit for human consumption; and
 - (b) be kept in a way that ensures they are not a source of contamination of prescribed fish and fish products.
- (3) Fish and fish products for use as animal food must:
- (a) be identified as for use as animal food and not fit for human consumption; and
 - (b) be kept in a way that ensures they are not a source of contamination of prescribed fish and fish products.
- (4) If, in relation to prescribed fish or fish products:
- (a) an export permit for the fish or fish products is revoked; or
 - (b) the holder of the approved arrangement for operations to prepare the fish or fish products is given a direction under subsection 305(1) of the Act that the fish or fish products are to be dealt with as not for export for food;
- the fish or fish products must:
- (c) be identified as not for export as food; and
 - (d) be kept in a way that ensures they are not a source of contamination of prescribed fish and fish products; and
 - (e) not be loaded for export.
- (5) Any other fish or fish products that, under this instrument, must be dealt with as not for export as food must:
- (a) be identified as not for export as food; and
 - (b) be kept in a way that ensures they are not a source of contamination of prescribed fish and fish products.
- (6) If prescribed fish or fish products do not meet importing country requirements of one or more countries, the following must be readily ascertainable:
- (a) the country or countries to which the fish or fish products are intended for export;
 - (b) whether the importing country requirements relating to the fish or fish products for each of those countries are met.

5-28 Product standards—general

Contaminants, chemicals, additives etc.

- (1) Prescribed fish and fish products and their ingredients must not contain any of the following that does not comply with a requirement of the Food Standards Code:

- (a) a level of metal or non-metal contaminant or a natural toxicant;
- (b) an amount of agricultural or veterinary chemical;
- (c) a food additive, processing aid, vitamin, mineral, added nutrient or other matter or substance.

Note 1: For contaminants and natural toxicants, see Standards 1.4.1 and 1.4.4 of the Food Standards Code. For histamines, see Standard 2.2.3 of the Food Standards Code.

Note 2: For agricultural or veterinary chemicals, see Standard 1.4.2 of the Food Standards Code.

Note 3: For food additives, processing aids and vitamins, see Standards 1.3.1 to 1.3.3 of the Food Standards Code.

- (2) Paragraph (1)(a) does not apply if:

- (a) importing country requirements provide for a maximum level of the contaminant or natural toxicant for the fish or fish products or their ingredients that is different from the Food Standards Code requirement; and
- (b) the approved arrangement for operations to prepare the fish or fish products provides for a system of controls to be implemented to ensure that the different requirement is complied with; and
- (c) the system of controls referred to in paragraph (b) of this subsection is implemented in accordance with the approved arrangement.

- (3) Paragraph (1)(b) does not apply if:

- (a) importing country requirements provide for an amount of agricultural or veterinary chemical for the fish or fish products or their ingredients that is different from the Food Standards Code requirement; and
- (b) the approved arrangement for operations to prepare the fish or fish products provides for a system of controls to be implemented to ensure that the different requirement is complied with; and
- (c) the system of controls referred to in paragraph (b) of this subsection is implemented in accordance with the approved arrangement.

- (4) Paragraph (1)(c) does not apply if:

- (a) importing country requirements provide for a food additive, processing aid, vitamin, mineral, added nutrient or other matter or substance for the fish or fish products or their ingredients that is different from the Food Standards Code requirement; and
- (b) the approved arrangement for operations to prepare the fish or fish products provides for a system of controls to be implemented to ensure that the different requirement is complied with; and
- (c) the system of controls referred to in paragraph (b) of this subsection is implemented in accordance with the approved arrangement.

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Note: It is a condition of an approved arrangement for export operations in relation to prescribed fish or fish products that all importing country requirements relating to the fish or fish products are met (see section 5-7).

Microbiological limits

- (5) Prescribed fish and fish products and their ingredients must meet the microbiological limits specified for fish or fish products and their ingredients in the Food Standards Code.

Note: For microbiological limits, see Standard 1.6.1 of the Food Standards Code.

- (6) Subsection (5) does not apply if:
- (a) importing country requirements provide for a microbiological limit for the fish or fish products or their ingredients that is different from the Food Standards Code requirement; and
 - (b) the approved arrangement for operations to prepare the fish or fish products provides for a system of controls to be implemented to ensure that the different microbiological limit requirement is met; and
 - (c) the system of controls referred to in paragraph (b) of this subsection is implemented in accordance with the approved arrangement.

Note 1: It is a condition of an approved arrangement for export operations in relation to prescribed fish or fish products that all importing country requirements relating to the fish or fish products are met (see section 5-7).

Note 2: For taking, testing and analysing samples in relation to microbiological limits, see section 11-11.

Gene technology, irradiation etc.

- (7) Prescribed fish and fish products and their ingredients must not:
- (a) be produced using gene technology; or
 - (b) be irradiated; or
 - (c) be produced using, or be subjected to, any other process;
- in contravention of the Food Standards Code.

Note 1: For gene technology, see Standard 1.5.2 of the Food Standards Code.

Note 2: For food irradiation, see Standard 1.5.3 of the Food Standards Code.

- (8) Subsection (7) does not apply if:
- (a) importing country requirements relating to the fish or fish products permit a process (the ***different process***) referred to in paragraph (7)(a), (b) or (c) to be used in relation to the fish or fish products or their ingredients that would contravene the Food Standards Code; and
 - (b) the approved arrangement for operations to prepare the fish or fish products provides for a system of controls to be implemented to ensure that the importing country requirements in relation to the different process are met; and
 - (c) the system of controls referred to in paragraph (b) of this subsection is implemented in accordance with the approved arrangement.

Note: It is a condition of an approved arrangement for export operations in relation to prescribed fish or fish products that all importing country requirements relating to the fish or fish products are met (see section 5-7).

Subdivision B—Shellfish

5-29 Harvesting shellfish

- (1) Without limiting section 5-16, shellfish for export as food, or from which fish products for export as food are to be derived, must not be harvested from:
 - (a) a prohibited area within the meaning of the Australian Shellfish Export Standards; or
 - (b) any other area in contravention of a requirement for harvesting from that area under the Australian Shellfish Export Standards.

Note: The export from Australian territory of shellfish for food is prohibited unless the operations to harvest the shellfish are carried out in an area specified in the Harvesting Areas (Shellfish for Export) List (see item 1 of the table in section 2-4 of this instrument). The List is published on the Department's website (see the definition of *Harvesting Areas (Shellfish for Export) List* in section 1-6 of this instrument).

- (2) Subsection (1) does not apply if:
 - (a) the final fish product for export as food is the adductor muscle of scallops or *Pinctada* spp. only; or
 - (b) the shellfish are harvested from an offshore location (other than an offshore location classified as an offshore harvesting area by the Australian Shellfish Export Standards).

5-30 Handling shellfish

- (1) Shellfish for export as food, or from which fish products for export as food are to be derived, must:
 - (a) be identified by lot; and
 - (b) be kept separate from shellfish from any other lot; and
 - (c) not be held in the same storage tank as other fish.
- (2) The shellfish must be deputed in accordance with section 5-31 unless they are harvested from:
 - (a) an area in an open status and classified by the Australian Shellfish Export Standards as:
 - (i) an Approved, Conditional Approved or offshore harvesting area; or
 - (ii) an Approved Remote area; or
 - (b) an offshore location.
- (3) Deputed shellfish must be kept separate from undeputed shellfish.
- (4) Water used for wet storage of shellfish must:
 - (a) not be a source of contamination for shellfish; and
 - (b) be sourced from an area that is in an open status and meets the Approved classification criteria of the Australian Shellfish Export Standards, or treated so that it does not contain detectable levels of the coliform group per 100 millilitres; and
 - (c) if it is from a tank containing fish (other than a multiple tank system with a common water supply containing shellfish)—be effectively disinfected.

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- (5) Shellfish for export as food, or from which fish products for export as food are to be derived, must:
- (a) be handled and stored in a way that does not adversely affect:
 - (i) their physiological activity during wet storage; or
 - (ii) their fitness for human consumption; and
 - (b) be clean before being placed in a wet storage tank.

5-31 Depuration of shellfish

- (1) Shellfish for depuration must be clean and practically free from mud and weed.
- (2) Water used for depuration of shellfish must:
- (a) be practically free from turbidity; and
 - (b) be of a salinity, temperature, dissolved oxygen level and pH necessary for the normal physiological functioning of shellfish; and
 - (c) unless it is sourced from an area in an open status and classified by the Australian Shellfish Export Standards as:
 - (i) an Approved or Conditional Approved harvesting area; or
 - (ii) an Approved Remote area;be treated so that it does not contain detectable levels of the coliform group per 100 millilitres.

Note: The Approved classification criteria apply to the Approved or Conditional Approved harvesting areas and the Approved Remote area. Water from an area in an open status that is classified as a Restricted or Conditional Restricted harvesting area will require treatment.

- (3) Depuration of shellfish must achieve an effective reduction of pathogens in the shellfish:
- (a) by reducing *E. coli* in the shellfish in accordance with Standard 1.6.1 of the Food Standards Code; or
 - (b) if the approved arrangement for operations to prepare the shellfish for export provides for a different method to achieve an effective reduction of pathogens in the shellfish—by using the different method.
- (4) If paragraph (3)(b) applies, the approved arrangement must provide for measures to validate the effectiveness of the different method in achieving an effective reduction of pathogens that could adversely affect the fitness for human consumption of the shellfish.
- (5) Shellfish must be depurated for at least 36 hours without interruption.
- (6) Shellfish must be depurated in sufficient water to achieve effective depuration.

Subdivision C—Crocodiles and crocodile meat

5-32 Handling crocodiles and crocodile meat

- (1) A crocodile must not be killed for crocodile meat for export for food if:
- (a) it is moribund or diseased; or

- (b) it has been fed or treated with a substance that could adversely affect the fitness for human consumption of crocodile meat derived from the crocodile; or
 - (c) it has been rejected for slaughter for human consumption in accordance with the Australian Crocodile Meat Standard.
- (2) The killing, bleeding, skinning and evisceration of crocodiles and the removal of their meat must be carried out in a way that minimises or eliminates the risks of contamination of crocodile meat derived from the crocodiles.
- Note: For guidance on how to comply with this provision, see the Australian Crocodile Meat Standard. For example, feed should be withheld from crocodiles at least 2 days before they are killed. Localised abscesses encountered during skinning should be removed by trimming.
- (3) During skinning, evisceration and the removal of crocodile meat, there must be no contact between the carcasses and carcase parts of different crocodiles.
- (4) Crocodile meat for export as food must not be contaminated by:
- (a) crocodile carcasses and carcase parts that have not been washed, skinned and eviscerated; or
 - (b) external crocodile skin surfaces or the contents of the gut, oesophagus and cloaca of the crocodile; or
 - (c) foreign matter.

5-33 Post-mortem controls for crocodile carcasses

- (1) Effective measures must be taken to ensure:
- (a) an accurate post-mortem disposition (as referred to in subsection (2)) can be applied to all crocodile carcasses and carcase parts prepared for export as food; and
 - (b) only crocodile carcasses and carcase parts that are not diseased and are fit for human consumption are prepared for export as food.
- (2) The carcasses and carcase parts must:
- (a) be passed for human consumption; or
 - (b) be passed for animal food; or
 - (c) be condemned;
- in accordance with the Australian Crocodile Meat Standard.

5-34 Temperature controls for preparation of crocodile meat products

- (1) Crocodiles from which crocodile meat for export as food is to be derived must be placed under temperature controls as soon as practicable after they are killed.

Chilling

- (2) Despite subsection 5-18(2), crocodile meat exposed to, or suspected of being infested by, *Spirometra erinacei* (sparganosis) must:
- (a) be held at a temperature of minus 12 °C or cooler for at least 5 days; or
 - (b) if the approved arrangement for operations to prepare the crocodile meat for export provides for different temperature controls to eliminate viable

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Spirometra erinacei (sparganosis) in the crocodile meat—be cooled in accordance with those controls.

- (3) For the purposes of subsection (2), the crocodile meat must be cooled quickly enough to minimise the growth of pathogens that could adversely affect the fitness for human consumption of the crocodile meat.
- (4) The approved arrangement for operations to prepare the crocodile meat for export must provide for measures to:
 - (a) validate the effectiveness, in minimising the growth of pathogens that could adversely affect the fitness for human consumption of the crocodile meat, of the rate of cooling the crocodile meat; and
 - (b) if subsection (2) applies—validate the effectiveness of the temperature controls provided by the approved arrangement in eliminating viable *Spirometra erinacei* (sparganosis) in the crocodile meat.

Freezing

- (5) Crocodile meat for export as food that is to be frozen must achieve:
 - (a) a temperature at the site of microbiological concern of minus 15 °C or cooler; or
 - (b) if the approved arrangement for operations to prepare the crocodile meat provides for a different temperature at the site of microbiological concern—that temperature.
- (6) For the purposes of subsection (5), achieving the temperature required must be done quickly enough to minimise the growth of pathogens that could adversely affect the fitness for human consumption of the crocodile meat.
- (7) The approved arrangement for operations to prepare the crocodile meat must provide for measures to validate the effectiveness of the rate of achieving the required temperature.

Division 5—Trade descriptions

Note: See Part 2 of Chapter 8 of the Act and Part 1 of Chapter 8 of this instrument in relation to trade descriptions.

5-35 Trade description must be applied to prescribed fish and fish products

General requirements

- (1) A trade description including the information referred to in subsection (3) must be applied to prescribed fish or fish products.
- (2) The trade description must be applied no later than the time the prescribed fish or fish products are packed in their immediate container before being loaded for export.

Note 1: For *trade description*, see section 246 of the Act. See also Chapter 8 of this instrument.

Note 2: For *applied*, in relation to a trade description, see section 247 of the Act.

Note 3: If the relevant importing country authority specifies that it does not require a trade description requirement prescribed by this Division to be met, the Secretary may approve a variation of the approved arrangement to provide that the trade description requirement does not apply (see section 161 of the Act and section 5-52 of this instrument).

Content of trade description

- (3) For the purposes of subsection (1), the information in relation to the prescribed fish or fish products is as follows:
 - (a) a description of the fish or fish products;
 - (b) the net weight of the fish or fish products;
 - (c) the country of origin of the fish or fish products;
 - (d) the registration number of the registered establishment where operations to prepare the fish or fish products (other than storing, handling or loading) were last carried out before export;
 - (e) the name and address of:
 - (i) the occupier of the registered establishment referred to in paragraph (d); or
 - (ii) the exporter or consignee of the fish or fish products;
 - (f) for fish or fish products that contain 2 or more ingredients—a list of ingredients in accordance with subsection 5-37(2);
 - (g) the identity of the lot of the fish or fish products;
 - (h) any directions for the use or storage of the fish or fish products that are necessary for reasons of food safety.

Note 1: The trade description must be accurate (see section 8-2). See also Division 3 of Part 2 of Chapter 8 of the Act for offences and civil penalty provisions in relation to false trade descriptions.

Note 2: The Australian Consumer Law (within the meaning of the *Competition and Consumer Act 2010*) contains prohibitions on engaging in conduct that is misleading or deceptive or is likely to mislead or deceive (see, for example, section 18) and prohibitions on making false or misleading representations, including about the country of origin of goods (see, for example, sections 29 and 151). Part 5-3 of that Law provides defences that certain country of origin representations made about goods do not contravene

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section 18 (misleading or deceptive conduct) or paragraph 29(1)(a) or (k) or 151(1)(a) or (k) (false or misleading representations) of that Law. For further guidance on correctly describing the country of origin, see the ACCC website (<https://www.accc.gov.au>).

- (4) For the purposes of paragraph (3)(a), for fish or fish products other than crocodile meat, the description must include:
 - (a) the scientific name or the standard fish name in the Australian Fish Names Standard (or both) for the fish or the species of fish from which the fish products were derived; and
 - (b) for fish products—the cut and method of preservation of the fish products.
- (5) For the purposes of paragraph (3)(d), the registration number must be clearly identifiable as being the registration number of the registered establishment referred to in that paragraph.
- (6) For the purposes of subparagraph (3)(e)(ii), if the exporter or consignee is not a person who prepared the fish or fish products for export, the name of the exporter or consignee must be preceded by the words “PACKED FOR” or a statement of similar meaning.
- (7) Subsection (1) does not apply to the following fish or fish products:
 - (a) fish or fish products transported from a registered establishment in cans without labels, if the cans comply with subsection 5-36(2);
 - (b) fish or fish products that have been bulk-loaded into container system units if the information referred to in subsection (3) of this section is:
 - (i) applied to the outer container of the fish or fish products; or
 - (ii) given to the consignee;before the fish or fish products are loaded for export;
 - (c) fish or fish products that are identified as not for retail sale if the information referred to in subsection (3) of this section is applied to the outer container of the fish or fish products before the outer container is loaded for export.

Repacked fish or fish products

- (8) In addition to any requirement of this instrument in relation to trade descriptions, imported fish or fish products that are repacked in Australian territory without being further processed in Australian territory must contain the name and registration number of the registered establishment where the fish or fish products were repacked preceded by the words “PACKED BY” or a statement of similar meaning.

5-36 Incomplete trade description—canned fish or fish products

- (1) If cans containing prescribed fish or fish products are not permanently marked with the complete trade description at the time of filling, the registration number of the registered establishment where the canning was carried out, preceded by the letters “EX”, must be embossed on the cans or indelibly applied directly to the cans.

- (2) If cans containing prescribed fish or fish products are to be transferred from a registered establishment without labels, the following must be embossed on the cans or indelibly applied directly to the cans:
- (a) a product code that can be used to identify the fish or fish products;
 - (b) the registration number of the registered establishment where the canning was carried out, preceded by the letters “EX”;
 - (c) the country of origin of the fish or fish products;
 - (d) the identity of the lot of the fish or fish products.

5-37 Labelling and naming of ingredients

Requirements of Food Standards Code

- (1) Prescribed fish or fish products must meet each applicable requirement for the labelling and naming of ingredients and compound ingredients in Standard 1.2.4 of the Food Standards Code.
- (2) If prescribed fish or fish products contain 2 or more ingredients, the ingredients must be listed in descending order of ingoing weight in accordance with Standard 1.2.4 of the Food Standards Code.

Compositional claims

- (3) If a claim as to composition is made in relation to prescribed fish or fish products, the trade description for the fish or fish products must include a quantitative statement supporting the claim.

5-38 Trade descriptions applied to packaging etc.

A trade description or any other information applied to:

- (a) an immediate container of prescribed fish or fish products; or
- (b) an outer container containing immediate containers of prescribed fish or fish products;

must not be inconsistent with the information required to be included in the trade description under this Division.

Division 6—Official marks

Note: See Part 3 of Chapter 8 of the Act and Part 2 of Chapter 8 of this instrument in relation to official marks.

5-39 Alteration of or interference with official mark

- (1) If the holder of an approved arrangement for operations to prepare prescribed fish or fish products for export at a registered establishment suspects that an official mark applied to prescribed fish or fish products at the establishment has been altered or interfered with in contravention of section 8-19, the holder must:
 - (a) notify an authorised officer immediately; and
 - (b) not deal with the fish or fish products further for export as food without the written approval of an authorised officer.
- (2) If the holder gives a notification under paragraph (1)(a) orally, the holder must, as soon as practicable after giving the notification, also give the notification in writing.

Division 7—Segregation, identification, security, traceability and integrity

5-40 Segregation, identification and traceability—general

To the extent necessary to ensure that one or more of the objects referred to in section 3 of the Act is met:

- (a) fish and fish products meeting a particular description:
 - (i) must be identified and segregated during preparation and transport from other fish and fish products not meeting that description; and
 - (ii) must not be confused with other fish or fish products not meeting that description; and
 - (iii) must be prepared and transported under conditions of security; and
- (b) inventory controls and tracing systems must be maintained.

Note: For requirements for inventory controls, see section 5-47.

5-41 Establishments where fish or fish products that are not for export etc. are prepared

- (1) Operations to prepare prescribed fish or fish products must not be carried out at an establishment where either of the following operations are also carried out:
 - (a) operations to prepare animal food or pharmaceutical material;
 - (b) operations to prepare any other food (including fish or fish products) that is not prescribed fish or fish products.

Example: Operations to prepare food for domestic consumption.

- (2) Subsection (1) does not apply if:
 - (a) the operations to prepare the prescribed fish or fish products are carried out at a registered establishment in accordance with an approved arrangement; and
 - (b) the fitness for human consumption and integrity of the prescribed fish or fish products are ensured; and
 - (c) operations referred to in paragraph (1)(a) or (b) to prepare fish or fish products at the establishment comply with the requirements of the Act for prescribed fish or fish products.

5-42 Integrity—general

- (1) The integrity of prescribed fish or fish products must be able to be ensured.

Note: The approved arrangement must provide for measures for the identification, traceability and integrity of the fish and fish products that ensure that they can be identified, traced and if necessary, recalled (see section 5-5).

- (2) The identity of prescribed fish or fish products:
 - (a) must be readily ascertainable; and
 - (b) must not be lost or confused with the identity of any other fish or fish products.

Chapter 5 Approved arrangements

Part 2 Conditions of approved arrangement

Division 7 Segregation, identification, security, traceability and integrity

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Note: For records that must be kept to ensure identification, traceability and integrity, see section 5-47.

- (3) Without limiting subsection (2), the following information must be applied to the outer container of prescribed fish or fish products before the outer container is transferred from the establishment at which the outer container is packed:
- (a) a description of the fish or fish products;
 - (b) the net weight of the fish or fish products;
 - (c) the country of origin of the fish or fish products;
 - (d) the identity of the lot of the fish or fish products;
 - (e) the registration number of the registered establishment where the fish or fish products were packed into their immediate container;
 - (f) any directions for the use or storage of the fish or fish products that are necessary for reasons of food safety.

Note: A description applied to an outer container must not be inconsistent with the information required to be included in the trade description under Division 5 of this Part (see section 5-38).

5-43 Species identification

- (1) Prescribed fish or fish products must be, or be derived from, the species of fish they purport to be, or be derived from.
- (2) To avoid doubt, prescribed fish or fish products (the ***relevant fish or fish products***) are not the species they purport to be, or to be derived from, if fish or fish products derived from another species are substituted wholly or partly for the relevant fish or fish products.

Division 8—Transfers

5-44 Information and declarations relating to transferred prescribed fish or fish products

- (1) If a consignment of prescribed fish or fish products is transferred from a registered establishment (the *transferring establishment*) to another registered establishment (the *receiving establishment*), the following information and declarations must be given to the occupier of the receiving establishment:
- (a) a full description of the fish or fish products;
 - (b) information about storage conditions for the fish or fish products;
 - (c) the name, address and registration number of the transferring establishment;
 - (d) the quantity of fish or fish products in the consignment;
 - (e) if the fish or fish products are in packages—the number and kind of packages;
 - (f) the name, address and registration number of the receiving establishment;
 - (g) if operations to prepare the fish or fish products were carried out to meet importing country requirements of one or more countries—the name of each country;
 - (h) if the consignment contains fish or fish products that are transferred in cans without labels or are fish or fish products that have been bulk-loaded into container system units—any other information referred to in subsection 5-35(3);
 - (i) if the consignment contains shellfish for export as food:
 - (i) the name of the harvester of the shellfish; and
 - (ii) the harvesting area and the unique lease number given to the harvester by the State or Territory authority responsible for regulating the growing and harvesting of the shellfish; and
 - (iii) the date of the harvest;
 - (j) a declaration stating that, at the date the declaration is made:
 - (i) the prescribed export conditions, and any other conditions that apply in relation to the fish or fish products under the Act, have been complied with; and
 - (ii) importing country requirements relating to the fish or fish products have been met;
 - (k) a declaration stating that all of the information given in relation to the consignment is true and complete.
- Note: See subsections (3) and (4) for matters relating to the declarations referred to in paragraphs (j) and (k) of this subsection.
- (2) The information and declarations in relation to a consignment required to be given to the occupier of the receiving establishment under subsection (1) must:
- (a) be in writing; and
 - (b) either:
 - (i) be given to the occupier when the consignment leaves the transferring establishment; or

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- (ii) accompany the consignment when it arrives at the receiving establishment.

Note 1: Electronic message formats should be compliant with the United Nations Rules for Electronic Data Interchange for Administration, Commerce and Transport (UNEDIFACT). These Rules could in 2021 be viewed on the website of the United Nations Economic Commission for Europe (<https://www.unece.org>).

Note 2: For when requirements to give information (including a declaration) in writing can be met by an electronic communication, see section 9 of the *Electronic Transactions Act 1999*. For electronic signatures, see section 10 of that Act.

Requirements for declarations

- (3) A declaration referred to in paragraph (1)(j) or (k) in relation to a consignment of prescribed fish or fish products must be made by:

- (a) the holder of the approved arrangement for operations to prepare the fish or fish products for export at the transferring establishment; or
(b) a person designated in the approved arrangement as a person who may make the declaration.

- (4) A declaration referred to in paragraph (1)(j) or (k):

- (a) must not be made if there are no reasonable grounds for making it; and
(b) must not be false or misleading; and
(c) must be signed and dated by the person who made it.

Note 1: For suspension or revocation of the approved arrangement if these requirements are not met, see sections 171 and 179 of the Act.

Note 2: A person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 368 and 369 of the Act).

- (5) Subsection (1) does not apply to a consignment of prescribed fish or fish products if:

- (a) the occupier of the transferring establishment is also the occupier of the receiving establishment; and
(b) the approved arrangement for operations to prepare the fish or fish products provides for a system of controls to be implemented to ensure that the requirements of Division 7 of this Part are complied with during the transfer.

5-45 Information and declarations not received or inaccurate or incomplete

- (1) This section applies if:

- (a) a consignment of prescribed fish or fish products is transferred to a registered establishment (the ***receiving establishment***); and
(b) the information and declarations required to be given to the occupier of the receiving establishment by section 5-44:
(i) are not given to the occupier in accordance with paragraph 5-44(2)(b);
or
(ii) are inaccurate or incomplete.

- (2) The holder of an approved arrangement for operations to prepare the fish or fish products for export must notify an authorised officer as soon as practicable after the holder becomes aware that this section applies to the consignment.
- (3) The fish or fish products must:
 - (a) be held at the receiving establishment and not dealt with further for export as food without the written approval of an authorised officer; or
 - (b) be identified as not for export as food and dealt with as not for export as food.

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Division 9—Management practices—export operations

5-46 Management practices, organisational structure, resources and personnel

- (1) The holder of an approved arrangement for operations to prepare prescribed fish or fish products for export must ensure that:
 - (a) the holder's management practices and organisational structure; and
 - (b) the resources provided to carry out the export operations; and
 - (c) the personnel who carry out the export operations and the training those personnel receive;are appropriate to ensure:
 - (d) compliance with the requirements of the Act in relation to the export operations and the prescribed fish or fish products; and
 - (e) that importing country requirements relating to the export operations and prescribed fish or fish products are met.
- (2) The holder must make a written record of details of the matters referred to in paragraphs (1)(a) to (c).

Note 1: The holder of the approved arrangement must retain each record made under this subsection for 3 years (see subsection 11-8(2)).

Note 2: For making electronic records, see subsection 12(1) of the *Electronic Transactions Act 1999*.

5-47 Verification of compliance with the Act and other matters

Matters that must be verified

- (1) The holder of an approved arrangement for a kind of export operations in relation to prescribed fish or fish products must verify that carrying out the export operations at a registered establishment in accordance with the approved arrangement will ensure compliance with the following:
 - (a) the applicable requirements of the Act;
 - (b) the conditions in Divisions 2 to 7 of this Part;
 - (c) section 5-46 of this instrument (management practices, organisational structure, resources and personnel).

Record of verification

- (2) A written record must be made of:
 - (a) the methods, procedures, tests, monitoring and other evaluations used to verify compliance with the matters referred to in subsection (1); and
 - (b) the results of the verification.

Note: The holder of the approved arrangement must retain each record made under this subsection for 3 years (see subsection 11-8(2)).

Inventory controls

- (3) The necessary inventory controls must be used in verifying compliance with the matters referred to in paragraphs (1)(b) and (c).

- (4) The inventory controls must be in writing, comprehensive, and able to be audited under Part 1 of Chapter 9 of the Act and as required by section 5-49 of this instrument.
- (5) Without limiting subsection (4), a record must be made of all information necessary to ensure the following in relation to prescribed fish or fish products prepared for export at the registered establishment:
 - (a) traceability to each lot of prescribed fish or fish products prepared for export at the registered establishment;
 - (b) traceability to the supplier of each ingredient used in each lot of prescribed fish or fish products (including date of supply).
- (6) For the purposes of paragraph (5)(a), the record must include for each lot of prescribed fish or fish products prepared for export at the registered establishment:
 - (a) the identity of the lot; and
 - (b) the quantity of fish or fish products in the lot; and
 - (c) a description of the fish or fish products in the lot and their ingredients; and
 - (d) the date of preparation of the fish or fish products in the lot; and
 - (e) for fish harvested at the establishment, or fish products containing fish harvested at the establishment—the date and location of harvest.

5-48 Action must be taken to address non-compliance

- (1) If a matter referred to in subsection 5-47(1) has not been complied with, or is not likely to be complied with, in carrying out export operations in relation to prescribed fish or fish products in accordance with an approved arrangement:
 - (a) action must be taken:
 - (i) to address the non-compliance; and
 - (ii) to ensure that the non-compliance does not recur or does not occur; and
 - (b) the effectiveness of the action must be assessed.
- (2) A written record must be made of action taken under paragraph (1)(a) and the assessment of the effectiveness of the action.

Note: The holder of the approved arrangement must retain each record made under this subsection for 3 years (see subsection 11-8(2)).

5-49 Internal audit and management review

- (1) Subject to subsection (2), internal audits and management reviews must be conducted of the effectiveness of the management practices of the holder of an approved arrangement for a kind of export operations in relation to prescribed fish or fish products that are carried out at a registered establishment in ensuring compliance with the matters referred to in subsection 5-47(1).

Note: An internal audit under this section is not an audit under Part 1 of Chapter 9 of the Act.
- (2) Internal audits are not required to be conducted if:
 - (a) fewer than 3 people are employed at the registered establishment to carry out export operations in accordance with the approved arrangement; and

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(b) management reviews are conducted in accordance with the approved arrangement.

(3) A record must be made of the following:

- (a) each internal audit and management review conducted under subsection (1);
- (b) the results of each internal audit or management review;
- (c) each decision (if any) to take action as a result of an internal audit or management review;
- (d) each action taken as a result of an internal audit or management review.

Note: The holder of the approved arrangement must retain each record made under this subsection for 3 years (see subsection 11-8(2)).

5-50 Authorised officer must be notified if prescribed fish or fish products are not fit for human consumption or integrity cannot be ensured etc.

(1) This section applies if the holder of an approved arrangement for operations to prepare prescribed fish or fish products for export at a registered establishment reasonably believes that any of the following circumstances exists in relation to prescribed fish or fish products for which an export permit has been issued:

- (a) there is or there will be a failure to meet applicable importing country requirements relating to the prescribed fish or fish products;
- (b) prescribed fish or fish products prepared for export at the registered establishment in accordance with the approved arrangement are not fit for human consumption;
- (c) there is or there has been a failure of a procedure, or another circumstance occurs or has occurred, at the registered establishment that has affected, or could affect, the fitness for human consumption of prescribed fish or fish products prepared for export at the establishment in accordance with the approved arrangement;
- (d) the fitness for human consumption, identification, traceability or integrity of prescribed fish or fish products prepared for export at the registered establishment in accordance with the approved arrangement cannot be ensured;
- (e) a consignment of prescribed fish or fish products was transferred to the registered establishment (the *receiving establishment*) from another registered establishment and:
 - (i) the information and declarations in relation to the consignment required by subsection 5-44(1) were not given to the occupier of the receiving establishment or did not accompany the consignment, as required by subsection 5-44(2), or were inaccurate or incomplete; and
 - (ii) the occupier of the receiving establishment is unable to obtain accurate and complete information and declarations.

(2) The holder of the approved arrangement must notify an authorised officer of the circumstance as soon as practicable after forming the belief.

(3) If the holder of an approved arrangement gives a notification under subsection (2) orally, the holder must, as soon as practicable after giving the notification, also give the notification in writing.

Part 3—Renewal of approved arrangement

5-51 Period within which application to renew approved arrangement must be made

For the purposes of paragraph 155(4)(a) of the Act, the period within which an application to renew an approved arrangement must be made is the period of 60 days starting on the day that is 180 days before the expiry date for the approved arrangement.

Note 1: For example, if an approved arrangement expires on 8 July in a year (other than a leap year), an application for renewal can be made at any time between 9 January and 10 March in that year.

Note 2: An application to renew an approved arrangement will only need to be made if there is an expiry date for the approved arrangement (see subsection 155(1) of the Act).

Part 4—Variation of approved arrangement

Division 1—Variations by holder

5-52 Requirements that must be met for variation to be approved or conditions varied

- (1) This section applies in relation to an application under subsection 161(1) of the Act to approve a variation of an approved arrangement for export operations in relation to prescribed fish or fish products for export to a particular country, or to vary the conditions of such an approved arrangement, if:
 - (a) the application is made because the relevant importing country authority does not require compliance with one or more conditions (the *relevant conditions*) in Divisions 3 to 7 of Part 2 of this Chapter; and
 - (b) the relevant importing country authority requires a different requirement relating to the prescribed fish or fish products to be met.

Note: A variation of an approved arrangement, or of the conditions of an approved arrangement, may be needed to implement an alternative regulatory arrangement approved under paragraph 379C(1)(a) of the Act or another significant variation (see Subdivisions B and C of Division 1 of Part 4 of Chapter 5 of the Act).

- (2) For the purposes of paragraph 161(3)(c) of the Act, it is a requirement that:
 - (a) compliance with the different importing country requirement referred to in paragraph (1)(b) of this section will not result in the relevant conditions being complied with; and
 - (b) the approved arrangement will provide for a system of controls to be implemented to ensure that the different importing country requirement will be met; and
 - (c) the system of controls referred to in paragraph (b) of this subsection will be implemented in carrying out operations in accordance with the approved arrangement.

5-53 Significant variations

For the purposes of subparagraph 164(2)(c)(ii) of the Act, the following kinds of variations are prescribed in relation to an approved arrangement for a kind of export operations in relation to prescribed fish or fish products:

- (a) a variation of the person who manages or controls the export operations;
- (b) a variation of the functions a person is permitted to perform in accordance with the approved arrangement, including the following:
 - (i) making declarations;
 - (ii) manufacturing or possessing an official marking device;
 - (iii) manufacturing, possessing, applying, altering or interfering with an official mark;
- (c) a variation of the export operations that might:
 - (i) jeopardise the fitness for human consumption of the prescribed fish or fish products or affect the ability to ensure their integrity; or

- (ii) adversely affect the ability to accurately assess whether the fitness for human consumption of the prescribed fish or fish products has been jeopardised;
- (d) a variation that will provide for operations to prepare fish or fish products that are not for export, or are animal food or pharmaceutical material, to be carried out as well as operations to prepare prescribed fish or fish products;
- (e) a variation that relates to or varies a variation of the approved arrangement that implemented an alternative regulatory arrangement approved under paragraph 379C(1)(a) of the Act.

Division 2—Variations required by Secretary

5-54 Other reasons for requiring holder to vary approved arrangement

- (1) This section applies in relation to an approved arrangement for operations to prepare prescribed fish or fish products for export.
- (2) For the purposes of paragraph 165(2)(h) of the Act, the Secretary may require the holder of the approved arrangement to vary an aspect of the arrangement under paragraph 165(1)(a) of the Act if the Secretary is no longer satisfied that compliance with the system of controls provided in the approved arrangement will ensure that there will be reasonable grounds for issuing:
 - (a) an export permit for prescribed fish or fish products prepared in accordance with the approved arrangement; or
 - (b) a government certificate in relation to prescribed fish or fish products prepared in accordance with the approved arrangement.

Part 5—Matters relating to applications

5-55 Application of this Part

This Part applies in relation to the following applications:

- (a) an application under section 150 of the Act to approve a proposed arrangement for a kind of export operations in relation to prescribed fish or fish products;
- (b) an application under section 155 of the Act to renew an approved arrangement for a kind of export operations in relation to prescribed fish or fish products;
- (c) an application under section 161 of the Act:
 - (i) to approve a variation of an approved arrangement for a kind of export operations in relation to prescribed fish or fish products; or
 - (ii) to vary the conditions of an approved arrangement for a kind of export operations in relation to prescribed fish or fish products;
- (d) an application that is taken to have been made under subsection 166(2) of the Act to approve a varied approved arrangement for a kind of export operations in relation to prescribed fish or fish products.

Note 1: If the Secretary has approved a manner for making an application, the application must be made in the approved manner and, if the Secretary has approved a form for making the application, it must include the information required by the form (see paragraphs 377(1)(a) and (b) of the Act).

Note 2: The Secretary may accept any information previously given to the Secretary in connection with an application made under the Act as satisfying any requirement to give that information under subsection 377(1) of the Act (see subsection 377(3) of the Act).

5-56 Initial consideration period

For the purposes of subsection 379(3) of the Act, the initial consideration period for an application is 120 days.

Note: The consideration period for an application starts on the day after the day the Secretary receives the application (see subsection 379(4) of the Act).

5-57 Period within which request relating to application must be complied with

For the purposes of paragraph 379(10)(b) of the Act, the period of 6 months is prescribed.

Chapter 7—Export permits

Part 1—Issue of export permit

7-1 Conditions of export permit

For the purposes of paragraph 227(1)(a) of the Act, the holder of an export permit for prescribed fish or fish products must make written records of measures taken to ensure that the applicable requirements of the Act have been complied with.

- Note 1: See, for example, sections 7-6 (additional or corrected information to be given to Secretary), 7-7 (return of export permit) and 11-5 (retaining export permit in secure place) of this instrument.
- Note 2: The holder of the export permit must retain each record made under this section for 3 years (see subsection 11-6(2) of this instrument).
- Note 3: The holder of an export permit may commit an offence or be liable to a civil penalty if a condition of the export permit is contravened (see subsections 227(4) and (5) of the Act).

7-2 Period of effect of export permit

For the purposes of paragraph 228(b) of the Act, an export permit for prescribed fish or fish products remains in force (unless it is revoked under section 233 of the Act) for 28 days starting on the day the permit is issued.

- Note: An export permit (other than an export permit issued by electronic means) must be retained in a secure place when it is not being used (see section 11-5 of this instrument).

Part 2—Variation, suspension and revocation of export permit

7-3 Period of effect of varied export permit

For the purposes of paragraph 230(b) of the Act, a varied export permit for prescribed fish or fish products remains in force (unless it is revoked under section 233 of the Act) for the remainder of the period for which the export permit as originally issued was in force under section 7-2.

Note: A varied export permit takes effect when it is issued (see paragraph 230(a) of the Act).

7-4 Circumstances in which export permit may be suspended

For the purposes of subsection 231(1) of the Act, the following circumstances are prescribed in relation to an export permit for prescribed fish or fish products:

- (a) a circumstance referred to in any of paragraphs 233(1)(a) to (f) of the Act;
- (b) a circumstance prescribed by section 7-5 of this instrument.

7-5 Other circumstances in which export permit may be revoked

For the purposes of paragraph 233(1)(g) of the Act, the following circumstances are prescribed in relation to an export permit for prescribed fish or fish products:

- (a) a person, other than the holder of the export permit, has given the Secretary information or a document in relation to the fish or fish products that is false, misleading or incomplete;
- (b) a condition or disease that is likely to affect the acceptability of the fish or fish products to the importing country is present in Australian territory;
- (c) the export of the fish or fish products could result in trade in the export of other goods from Australian territory being adversely affected.

Note: If an export permit is revoked, the person to whom it was issued must return the permit to the Secretary within 10 business days (unless it was issued by electronic means) (see section 7-7).

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Part 3—Other matters

7-6 Changes that require additional or corrected information to be given to the Secretary

For the purposes of paragraph 235(1)(b) of the Act, each of the following changes is prescribed in relation to prescribed fish or fish products for which an export permit is in force but that have not been exported:

- (a) there are reasonable grounds to suspect that:
 - (i) the fitness for human consumption of the fish or fish products has been jeopardised; or
 - (ii) the integrity of the fish or fish products cannot be ensured;
- (b) there are reasonable grounds to suspect that an importing country requirement relating to the fish or fish products will not be, or is not likely to be, met before the fish or fish products are imported into the importing country;
- (c) there are reasonable grounds to suspect that a prescribed export condition relating to the fish or fish products has not been complied with in circumstances where the condition should have been complied with.

Note: The exporter may be liable to a civil penalty if the exporter fails to comply with a requirement under section 235 of the Act (see subsection 235(3) of the Act).

7-7 Return of export permit

- (1) For the purposes of section 236 of the Act, a person to whom an export permit for prescribed fish or fish products was issued must return the permit to the Secretary if the permit is revoked. The permit must be returned within 10 business days starting on the day the permit was revoked.
- (2) Subsection (1) does not apply in relation to an export permit that was issued by electronic means.

7-8 Notification that prescribed fish or fish products are not to be exported

- (1) For the purposes of section 237 of the Act, the holder of an export permit for prescribed fish or fish products must notify the Secretary, in writing, if it is no longer intended to export the fish or fish products because of a circumstance referred to in section 7-4 of this instrument.
- (2) The notification must be given as soon as practicable, but not later than 10 business days, after the decision not to export the prescribed fish or fish products is made.

Part 4—Applications for export permits

7-9 Application of this Part

This Part applies in relation to the following applications:

- (a) an application under section 224 of the Act for an export permit for prescribed fish or fish products;
- (b) an application under paragraph 229(3)(b) of the Act to vary:
 - (i) an export permit for prescribed fish or fish products; or
 - (ii) conditions of an export permit for prescribed fish or fish products.

7-10 Documents to accompany application

- (1) For the purposes of paragraph 239(1)(d) of the Act, an application must be accompanied by a declaration stating that the applicant has in the applicant's possession:
 - (a) the information and declarations given to the occupier of a receiving establishment in relation to the fish or fish products under section 5-44 of this instrument by the occupier of the registered establishment where operations to prepare the fish or fish products for export (other than storing, handling or loading) were last carried out; or
 - (b) a declaration by a relevant person that:
 - (i) identifies the fish or fish products; and
 - (ii) states that the requirements of the Act in relation to the export of the fish or fish products have been, or will be, complied with and importing country requirements relating to the fish or fish products have been met, or will be met before the fish or fish products are imported into the importing country; and
 - (iii) states that the information in the declaration is true and correct; and
 - (iv) is signed and dated by the person who made it.
 - (2) If an assessor has given notice to the applicant under subsection 9-20(2), the declaration referred to in subsection (1) must also state that the applicant has the notice.
 - (3) The declaration must be in the form approved by the Secretary.
 - (4) The declaration:
 - (a) must not be made if there are no reasonable grounds for making it; and
 - (b) must not be false or misleading; and
 - (c) must be signed and dated by the person who made it.
- Note: A person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 368 and 369 of the Act).
- (5) For the purposes of paragraph (1)(b), each of the following persons is a **relevant person**:

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- (a) the holder of the approved arrangement for operations to prepare the fish or fish products for export at the registered establishment where those operations (other than storing, handling or loading) were last carried out;
- (b) a person designated in the approved arrangement as a person who may make the declaration referred to in paragraph (1)(b).

Chapter 8—Other matters relating to export

Part 1—Trade descriptions

8-1 Purpose of this Part

For the purposes of section 248 of the Act, this Part makes provision for and in relation to trade descriptions for prescribed fish and fish products that are intended to be exported.

Note: A person may commit an offence or be liable to a civil penalty if the person engages in conduct that contravenes a provision in this Part (see section 249 of the Act).

8-2 General requirements for trade descriptions

- (1) A trade description applied to prescribed fish or fish products must:
 - (a) be accurate and unambiguous; and
 - (b) to the extent practicable, be securely attached (unless the trade description is stated in any document relating to the fish or fish products); and
 - (c) be legible; and
 - (d) be prominent, conspicuous and not obscured in any way; and
 - (e) to the extent practicable, be tamper evident.

Note: For *applied*, in relation to a trade description, see section 247 of the Act.

- (2) Information or pictures that are applied to prescribed fish or fish products in addition to the trade description must not be inconsistent with the information required to be included in the trade description under Division 5 of Part 2 of Chapter 5 of this instrument (approved arrangements).

8-3 Trade descriptions in language other than English

- (1) This section applies in relation to a trade description that is applied to prescribed fish or fish products if any part of the trade description is in a language (the *foreign language*) other than English.
- (2) The part of the trade description that is in the foreign language must not be inconsistent with the part of the trade description that is in English.
- (3) On request, in writing, by an authorised officer to one of the following persons, the person must make available to an authorised officer a translation in English of the part of the trade description that is in the foreign language:
 - (a) the occupier of the registered establishment where the trade description was applied to the prescribed fish or fish products;
 - (b) the occupier of another registered establishment where the prescribed fish or fish products are being held at the time of the request;
 - (c) the exporter of the prescribed fish or fish products.
- (4) The translation into English required by subsection (3) must be done by a person who:
 - (a) has appropriate qualifications for doing the translation; and

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- (b) is not employed by, and is independent of, the person referred to in subsection (3) who is required to make the translation available to an authorised officer.

Part 2—Official marks

Division 1—Marks that are official marks

8-4 Purpose of this Division

For the purposes of subsection 255(1) of the Act, this Division provides that specified marks are official marks for the purposes of the Act for fish or fish products that are intended to be exported.

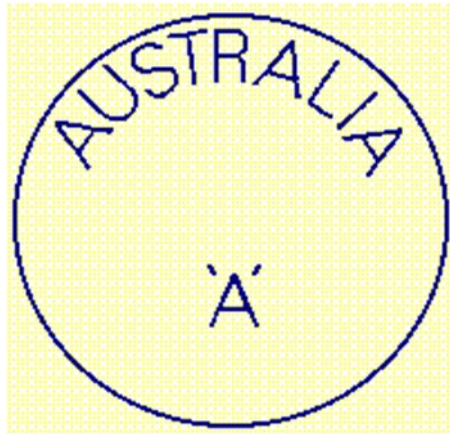
8-5 Tolerances for dimensions of official marks

The dimensions specified in this Division for an official mark for the purposes of the Act, or a part of such a mark, are subject to the following tolerances:

- (a) for dimensions up to 10 mm— ± 1 mm;
- (b) for dimensions over 10 mm— ± 2 mm.

8-6 Official mark—foreign country identification

- (1) A mark of the following design (with the relevant foreign country identification mark substituted for ‘A’), and of the dimensions provided by subsection (3), is an official mark for the purposes of the Act.



- (2) For the purposes of this section, a **foreign country identification mark** is a mark that is required to be applied to fish or fish products that are to be imported into that country, as determined by the relevant importing country authority.

Note: For guidance on foreign country identification marks, see MICoR.

- (3) The dimensions are as follows:
- (a) the diameter of the circle—50 mm;
 - (b) the minimum height of the letters in the word “Australia”—6 mm;
 - (c) the dimensions of the foreign country identification mark—as specified for the mark by the relevant importing country authority.

Note: For guidance on the requirements for the dimensions of a foreign country identification mark, see MICoR.

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8-7 Official mark—tamper-indicative metal strap seal

A seal that:

- (a) is a tamper-indicative metal strap seal that can be secured in a loop by inserting one end of the seal into or through a protected locking mechanism on the other end; and
- (b) complies with ISO 17712:2013 *Freight containers — Mechanical seals*, published by the International Organization for Standardization, as that document exists at the commencement of this instrument; and
- (c) bears the words “Australian Government”; and
- (d) bears a unique number, or a unique combination of letters and numbers, provided to the manufacturer of the seal by the Department;

is an official mark for the purposes of the Act.

8-8 Official mark—bolt seal

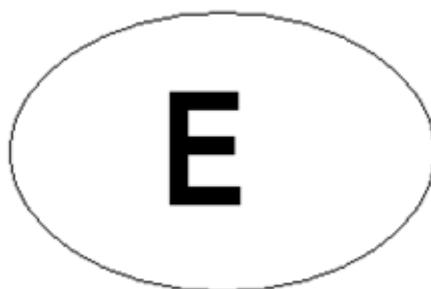
A seal that:

- (a) is a high security bolt seal; and
- (b) complies with ISO 17712:2013 *Freight containers — Mechanical seals*, published by the International Organization for Standardization, as that document exists at the commencement of this instrument; and
- (c) bears the words “Australian Government”; and
- (d) bears a unique number, or a unique combination of letters and numbers, provided to the manufacturer of the seal by the Department; and
- (e) is coated with green or blue plastic;

is an official mark for the purposes of the Act.

8-9 Official mark—European Union

- (1) A mark of the following design, and of the dimensions provided by subsection (2), is an official mark for the purposes of the Act.

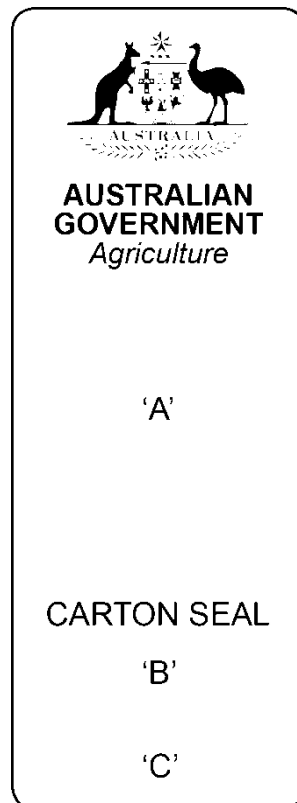


- (2) The dimensions are as specified in:
 - (a) for a normal size mark—column 2 of the following table; or
 - (b) for a small size mark to be applied to a small item or the end panel of a carton—column 3 of the following table; or
 - (c) for a computer-generated mark—column 4 of the following table.

Dimensions—European Union official mark				
Item	Column 1 Section of mark	Column 2 Normal size mark (mm)	Column 3 Small size mark (mm)	Column 4 Computer-generated mark (mm)
1	Width of mark	65	32	16
2	Height of mark	45	22	11
3	Height of letter “E”	10	3	3

8-10 Official mark—carton seal

- (1) A mark:
- (a) of the following design (but with the substitutions provided by subsection (3)); and
 - (b) printed in black, except for the Coat of Arms which is printed in red, on a white or security background; and
 - (c) of the dimensions provided by subsection (2);
- is an official mark for the purposes of the Act.



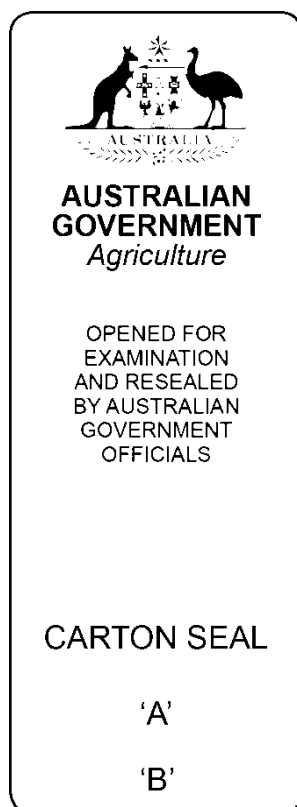
- (2) The dimensions are:
- (a) width not less than 45 mm, and not more than 75 mm; and
 - (b) height not less than 125 mm, and not more than 160 mm.
- (3) The substitutions in the design of the mark are as follows:

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- (a) the registration number of the registered establishment where operations to prepare the relevant fish or fish products for export were carried out is to be substituted for 'A';
- (b) a number, or a combination of letters and numbers, associated with the manufacturer of the mark is to be substituted for 'B';
- (c) a number, or a combination of letters and numbers, that is unique to each mark is to be substituted for 'C'.

8-11 Official mark—goods opened for assessment and resealed

- (1) A mark:
 - (a) of the following design (but with the substitutions provided by subsection (3)); and
 - (b) printed in green, except for the Coat of Arms which is printed in red, on a white or security background; and
 - (c) of the dimensions provided by subsection (2);is an official mark for the purposes of the Act.



- (2) The dimensions are:
 - (a) width not less than 45 mm, and not more than 75 mm; and
 - (b) height not less than 125 mm, and not more than 160 mm.
- (3) The substitutions in the design of the mark are as follows:
 - (a) a number, or a combination of letters and numbers, associated with the manufacturer of the mark is to be substituted for 'A';

- (b) a number, or a combination of letters and numbers, that is unique to each mark is to be substituted for 'B'.

8-12 Official mark—Australian Government

A mark of the following design (but with a number representing the user of the mark substituted for “XXXX”) is an official mark for the purposes of the Act.



Note: Sections 8-15 to 8-19 and 8-29 do not apply in relation to an official mark specified in this section (see subsections 8-13(2) and 8-29(2)).

Division 2—General rules relating to official marks

8-13 Purpose and application of this Division

- (1) For the purposes of subsection 255(2) of the Act, this Division makes provision for and in relation to certain matters relating to official marks specified in Division 1 of this Part for fish or fish products that are intended to be exported.

Note: A person may commit an offence or be liable to a civil penalty if the person engages in conduct that contravenes a provision in this Division (see section 258 of the Act). Other provisions in Division 3 of Part 3 of Chapter 8 of the Act provide offences and civil penalty provisions relating to false, misleading or deceptive official marks.

- (2) Sections 8-15 to 8-19 do not apply in relation to an official mark specified in section 8-12.

8-14 Interpretation

*When an official mark is **applied** to fish or fish products*

- (1) For the purposes of this instrument, an official mark is **applied** to fish or fish products if the official mark is:
- (a) applied directly to the fish or fish products, their packaging or any covering containing the fish or fish products; or
 - (b) applied to anything attached to the fish or fish products, their packaging or any covering containing the fish or fish products; or
 - (c) inserted into anything in which the fish or fish products are packaged or any covering containing the fish or fish products.

References to particular official marks

- (2) In this Division, a reference to a particular official mark is a reference to the official mark with that description specified in Division 1 of this Part.

8-15 Persons who may manufacture or supply official marks for fish or fish products

A person may manufacture or supply an official mark for fish or fish products only if:

- (a) the person is an authorised officer; or
- (b) the manufacture or supply of the official mark by the person is:
 - (i) covered by an approved arrangement; or
 - (ii) in accordance with a direction given by an authorised officer; or
- (c) the Secretary has given the person a written approval to manufacture or supply the official mark at a specified registered establishment and in relation to specified fish or fish products, and the manufacture or supply is in accordance with that approval.

8-16 Persons who may possess official marks that have not been applied to fish or fish products

A person may possess an official mark for fish or fish products that has not been applied to any fish or fish products only if:

- (a) the person is permitted to manufacture or supply the official mark under section 8-15 or to apply the official mark under section 8-17; or
- (b) the person is an authorised officer; or
- (c) the possession of the official mark by the person is:
 - (i) covered by an approved arrangement; or
 - (ii) in accordance with a direction given by an authorised officer; or
- (d) the Secretary has given the person a written approval to possess the official mark at a specified registered establishment and in relation to specified fish or fish products, and the possession is in accordance with that approval.

8-17 Persons who may apply official marks to fish or fish products etc.

An official mark may be applied to fish or fish products only by:

- (a) a person acting in accordance with:
 - (i) an approved arrangement that covers the application of the official mark; or
 - (ii) a direction given by an authorised officer; or
- (b) an authorised officer; or
- (c) a person to whom the Secretary has given a written approval to apply the official mark at a specified registered establishment and in relation to specified fish or fish products, if the application is in accordance with the approval.

8-18 Circumstances in which official mark must not be applied to fish or fish products

General

- (1) A person must not apply an official mark to fish or fish products if the fish or fish products:
 - (a) are not fit for human consumption; or
 - (b) have deteriorated.

Foreign country identification official marks and European Union official marks

- (2) A person must not apply a foreign country identification official mark or a European Union official mark to fish or fish products if the circumstances in which that mark may be applied to the fish or fish products, as specified by the relevant importing country authority, no longer exist.

Note: For the foreign country identification mark, see section 8-6. For the European Union official mark, see section 8-9.

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8-19 Alteration of and interference with official marks

A person may alter, or interfere with, an official mark (whether or not it has been applied to any fish or fish products) only if:

- (a) the alteration or interference is required or permitted by this instrument; or
- (b) the person is an authorised officer or a person acting in accordance with a direction given by an authorised officer; or
- (c) the person is designated in an approved arrangement as a person who may alter or interfere with an official mark and the alteration or interference is in accordance with the arrangement; or
- (d) the Secretary has given the person a written approval to alter or interfere with an official mark at a specified registered establishment and in relation to specified fish or fish products, and the alteration or interference is in accordance with the approval.

Note 1: For how a direction may be given by an authorised officer, see section 309 of the Act.

Note 2: A person may commit an offence or be liable to a civil penalty if the person engages in conduct and the conduct has the result that an official mark applied to certain fish or fish products or documents is altered so as to be false, misleading or deceptive (see sections 261 and 262 of the Act).

8-20 Official marks must be legible and securely attached

An official mark applied to fish or fish products must be:

- (a) legible; and
- (b) securely attached.

8-21 Security of official marks

A person who is in possession of an official mark that has not been applied to any fish or fish products, as permitted by section 8-16, must ensure that the official mark is stored securely.

8-22 Removal or defacement of official marks

- (1) If an official mark has been applied to fish or fish products, the official mark must be removed or defaced if the fish or fish products are no longer fit for human consumption or have deteriorated.
- (2) Without limiting subsection (1), if an official mark has been applied to a carton in which fish or fish products are packed, the official mark must be removed or defaced if it is no longer intended:
 - (a) to export the fish or fish products; or
 - (b) to export the fish or fish products in that carton.

Foreign country identification official marks and European Union official marks

- (3) Without limiting subsection (1), if a foreign country identification official mark or a European Union official mark has been applied to fish or fish products, the official mark must be removed or defaced if the circumstances in which that mark may be applied to the fish or fish products, as specified by the relevant importing country authority, no longer exist.

Persons who may remove or deface official mark

- (4) If an official mark has been applied to fish or fish products and the official mark is required to be removed or defaced under any of subsections (1) to (3), the official mark must be removed or defaced by:
- (a) an authorised officer or a person acting in accordance with a direction given by an authorised officer; or
 - (b) a person designated in an approved arrangement in accordance with which the official mark was applied to the fish or fish products as a person who may remove or deface the official mark; or
 - (c) a person to whom the Secretary has given a written approval to remove or deface the official mark at a specified registered establishment and in relation to specified fish or fish products, if the official mark is removed or defaced in accordance with the approval.

Note 1: For how a direction may be given by an authorised officer, see section 309 of the Act.

Note 2: A person may commit an offence or be liable to a civil penalty if the person engages in conduct that contravenes a provision in this Division (see section 258 of the Act)

8-23 Records of official marks manufactured or supplied

The holder of an approved arrangement that covers the manufacture or supply of official marks for use at establishments that are registered for operations to prepare fish or fish products for export must:

- (a) make a daily written record stating:
 - (i) each kind of official mark manufactured on that day; and
 - (ii) the number of each kind of official mark manufactured on that day; and
- (b) make a written record stating:
 - (i) each day a consignment of official marks was supplied to an establishment that is registered for operations to prepare fish or fish products for export; and
 - (ii) each kind of official mark included in the consignment; and
 - (iii) the means used to transport the consignment.

Note: The holder of the approved arrangement must retain each record made under this section for 3 years (see subsection 11-8(2)).

8-24 Records of official marks received, applied, removed, defaced, destroyed or returned

The holder of an approved arrangement for operations to prepare prescribed fish or fish products for export at a registered establishment must make a written record of the following:

- (a) consignments of official marks received at the establishment;
- (b) official marks applied to fish or fish products at the establishment;
- (c) official marks removed from fish or fish products, or defaced, at the establishment;
- (d) official marks destroyed at the establishment;
- (e) official marks returned from the establishment.

Chapter 8 Other matters relating to export

Part 2 Official marks

Division 2 General rules relating to official marks

Section 8-24

Note: The holder of the approved arrangement must retain each record made under this section for 3 years (see subsection 11-8(2)).

Division 3—Marks resembling official marks

8-25 Purpose of this Division

For the purposes of section 256 of the Act, this Division makes provision for and in relation to marks (*resemblances*) that:

- (a) resemble an official mark specified in Division 1 of this Part; or
- (b) are apparently intended to resemble or pass for an official mark specified in Division 1 of this Part.

Note: A person may commit an offence or be liable to a civil penalty if the person engages in conduct that contravenes a provision in this Division (see section 258 of the Act).

8-26 Circumstances in which a mark resembles an official mark

A mark resembles an official mark specified in Division 1 of this Part if the mark is, in all material respects, of the same design as the official mark, but its dimensions are different from the dimensions specified for the official mark in that Division.

8-27 Persons who may apply a resemblance

A person may apply a resemblance to fish or fish products, or to any thing containing fish or fish products, only if:

- (a) the person is designated in an approved arrangement as a person who may apply the resemblance to fish or fish products, or the thing containing fish or fish products; and
- (b) the application of the resemblance is in accordance with the approved arrangement.

Division 4—Official marking devices

8-28 Purpose of this Division

For the purposes of subsection 257(2) of the Act, this Division makes provision for and in relation to official marking devices that are capable of being used to apply an official mark specified in Division 1 of this Part to fish or fish products that are intended to be exported.

Note: A person may commit an offence or be liable to a civil penalty if the person engages in conduct that contravenes certain provisions in this Division (see section 258 of the Act).

8-29 Persons who may manufacture, supply or possess official marking devices

- (1) A person may manufacture, supply or possess an official marking device only if:
 - (a) the person is an authorised officer or is acting in accordance with a direction given by an authorised officer; or
 - (b) the person is designated in an approved arrangement as a person who may manufacture, supply or possess an official marking device and the manufacture, supply or possession is in accordance with the arrangement; or
 - (c) the Secretary has given the person a written approval to manufacture, supply or possess the official marking device and the manufacture, supply or possession is in accordance with that approval.

Note: For how a direction may be given by an authorised officer, see section 309 of the Act.

- (2) This section does not apply in relation to an official mark specified in section 8-12.

8-30 Security of official marking devices

A person who is in possession of an official marking device, as permitted by section 8-29, must ensure that the official marking device is stored securely when it is not being used.

8-31 Damaged etc. official marking devices

- (1) This section applies if:
 - (a) a person (other than an authorised officer) is in possession of an official marking device; and
 - (b) the person becomes aware that the official marking device is damaged or destroyed, worn or otherwise unfit for applying an official mark to fish or fish products.
- (2) The person must notify an authorised officer in writing as soon as practicable after becoming aware of that fact and retain the official marking device in a secure place until otherwise directed by an authorised officer.

8-32 Records of official marking devices manufactured or supplied

A person (other than an authorised officer) who is permitted, under section 8-29, to manufacture or supply official marking devices for use at establishments that are registered for operations to prepare fish or fish products for export must:

- (a) make a daily written record stating:
 - (i) each kind of official marking device manufactured by the person on that day; and
 - (ii) the number of each kind of official marking device manufactured by the person on that day; and
 - (iii) the serial number of each official marking device manufactured by the person on that day; and
- (b) make a written record stating:
 - (i) each day official marking devices were supplied by the person to establishments that are registered for operations to prepare fish or fish products for export; and
 - (ii) the means used to transport each official marking device supplied by the person on that day.

Note: A person who is required to make a record under this section must retain the record for 3 years (see section 11-9).

8-33 Records of official marking devices received, used, damaged, destroyed or returned

The occupier of an establishment that is registered for operations to prepare fish or fish products for export must make a written record of the following:

- (a) official marking devices received at the establishment;
- (b) official marking devices used to apply official marks to fish or fish products at the establishment;
- (c) official marking devices damaged or destroyed at the establishment;
- (d) official marking devices returned from the establishment.

Note: The occupier of the registered establishment must retain each record made under this section for 3 years (see subsection 11-7(2)).

Chapter 9—Powers and officials

Part 1—Audits

Division 1—General

9-1 References to audit in this Part

In this Part, a reference to an audit is a reference to an audit under Part 1 of Chapter 9 of the Act:

- (a) of export operations carried out in relation to fish or fish products; or
- (b) in relation to the performance of functions or the exercise of powers under the Act in relation to fish or fish products by a person referred to in subparagraph 267(1)(a)(i), (ii), (iii) or (v) of the Act; or
- (c) in relation to compliance by a person referred to in subparagraph 267(1)(a)(i), (ii) or (iii) of the Act with the conditions applying to the performance of functions or the exercise of powers under the Act by the person in relation to fish or fish products.

9-2 Audits of export operations

For the purposes of paragraph 266(2)(f) of the Act, whether the conditions of an exemption under Part 2 of Chapter 2 of the Act in relation to export operations carried out in relation to prescribed fish or fish products are being, have been, or are likely to be complied with is a matter to which an audit under subsection 266(1) of the Act may relate.

Division 2—Conduct of audit etc.

9-3 Purpose of this Division

For the purposes of subsections 270(4) and (5) of the Act, this Division makes provision for and in relation to the following matters:

- (a) the conduct of an audit;
- (b) processes for dealing with any non-compliance with a requirement to which an audit relates;
- (c) audit reports.

9-4 Manner in which audit must be conducted

- (1) An audit must be conducted:
 - (a) as expeditiously as reasonably practicable; and
 - (b) in a way that results in minimal interference to the export operations, or the performance of functions or the exercise of powers under the Act, to which the audit relates.

Note: The Secretary need not give notice of an audit (see subsection 270(1) of the Act).

- (2) Subject to operational constraints, an audit of a vessel may take place during operations at sea.

9-5 Notice of non-compliance with requirements

- (1) If the result of an audit of export operations under subsection 266(1) of the Act is that, in the auditor's opinion, there is, or there has been, a failure (or a combination of failures) that amounts to a non-compliance with a requirement to which the audit relates, the auditor must:
 - (a) as soon as practicable after completing the audit, notify, in writing, the relevant person for the audit of the auditor's opinion; and
 - (b) assess whether the failure (or combination of failures) is a critical non-compliance.

Note 1: An auditor is an authorised officer or an approved auditor (see the definition of *auditor* in section 12 of the Act).

Note 2: For the person who is the *relevant person* for an audit, see section 269 of the Act.

- (2) If, in the auditor's opinion, the failure (or combination of failures) is a critical non-compliance, the auditor must notify the Secretary of that opinion as soon as practicable after forming it.
- (3) If the auditor gives a notification under subsection (2) orally, the auditor must, as soon as practicable after giving the notification, also give the notification in writing.
- (4) For the purposes of this section and section 9-6 (audit reports), a failure (or a combination of failures) to comply with a requirement to which an audit relates is a *critical non-compliance* if the failure (or combination of failures):

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- (a) results in, or is likely to result in, the export, or the preparation for export, of fish or fish products as food, the integrity of which cannot be ensured; or
- (b) results in, or is likely to result in, the export, or the preparation for export, of fish or fish products as food that:
 - (i) are not fit for human consumption; or
 - (ii) are not traceable; or
 - (iii) cannot be recalled if required; or
 - (iv) do not meet an importing country requirement relating to the fish or fish products; or
- (c) results in, or is likely to result in, the issuing of an export permit or a government certificate in relation to prescribed fish or fish products for which there are no reasonable grounds; or
- (d) prevents, or is likely to prevent, an accurate assessment of whether the integrity of fish or fish products exported, or prepared for export, as food can be ensured; or
- (e) prevents, or is likely to prevent, an accurate assessment of whether fish or fish products exported, or prepared for export, as food:
 - (i) are fit for human consumption; or
 - (ii) are traceable and can be recalled if required; or
 - (iii) meet an importing country requirement relating to the fish or fish products; or
- (f) prevents, or is likely to prevent, an accurate assessment of whether there are, or will be, reasonable grounds for issuing:
 - (i) an export permit for the prescribed fish or fish products; or
 - (ii) a government certificate in relation to the prescribed fish or fish products.

9-6 Audit reports

- (1) After an auditor completes an audit, or the audit ends, the auditor must make a written report (an **audit report**) of the audit.

Note: An auditor is an authorised officer or an approved auditor (see the definition of **auditor** in section 12 of the Act).

- (2) The audit report must include the following:
- (a) the name of the auditor;
 - (b) the day the audit commenced, the day the audit was completed or ended and the total time spent (in hours) conducting the audit;
 - (c) the names of the persons present at the entry and exit meetings for the audit;
 - (d) a description of the export operations, or the matters referred to in subsection 267(1) of the Act, to which the audit relates;
 - (e) a description of the nature and scope of the audit.
- (3) The audit report must state:
- (a) whether, in the auditor's opinion:
 - (i) the audit was satisfactorily completed or the audit was ended before it could be satisfactorily completed; and

- (ii) the requirements to which the audit relates are being, or have been, complied with; and
 - (b) the reasons for the auditor's opinion.
- (4) If the audit identified that there is, or there has been, a failure (or a combination of failures) that amounts to a non-compliance with one or more requirements to which the audit relates, the audit report must:
 - (a) describe each failure; and
 - (b) state whether, in the auditor's opinion, the failure (either by itself or in combination with other failures) is a critical non-compliance (within the meaning of subsection 9-5(4)) or has contributed to a critical non-compliance; and
 - (c) state the reasons for the auditor's opinion.
- (5) The audit report may also include recommendations that any of the following actions be taken:
 - (a) action to address any non-compliance with a requirement to which the audit relates;
 - (b) action to ensure that any such non-compliance does not recur;
 - (c) action to assess the effectiveness of an action referred to in paragraph (a) or (b).
- (6) Within 14 business days after the audit is completed or ends, the auditor must:
 - (a) give the audit report to the Secretary in a manner approved by the Secretary; and
 - (b) give a copy of the audit report to the relevant person for the audit.

Note: For the person who is the *relevant person* for an audit, see section 269 of the Act.

Division 3—Approved auditors

9-7 Purpose of this Division

For the purposes of subsections 273(6) and (7) of the Act, this Division makes provision for and in relation to matters relating to the approval of individuals to conduct audits.

9-8 Application for approval

- (1) An individual may apply to the Secretary to approve the individual, under subsection 273(1) of the Act, to conduct audits.
- (2) An application must:
 - (a) if the Secretary has approved, in writing, a manner for making an application—be made in an approved manner; and
 - (b) if the Secretary has approved a form for making an application—include the information required by the form; and
 - (c) be accompanied by the following:
 - (i) written evidence of the applicant's qualifications;
 - (ii) a document detailing the applicant's experience to the extent that it is relevant to the work of an auditor;
 - (iii) a document setting out the procedures for the conduct of audits by the applicant;
 - (iv) if an application fee is prescribed by the *Export Control (Fees and Payments) Rules 2021*—the prescribed application fee.
- (3) An application is taken not to have been made if the application does not comply with the requirements referred to in subsection (2).

9-9 Secretary must decide whether to approve applicant to conduct audits

- (1) On receiving an application under section 9-8, the Secretary must decide:
 - (a) to approve the applicant, under subsection 273(1) of the Act, to conduct audits; or
 - (b) to refuse to approve the applicant to conduct audits.

Note: A decision to refuse to approve the applicant to conduct audits is a reviewable decision (see section 11-1 of this instrument) and the Secretary must give the applicant written notice of the decision (see section 382 of the Act).

- (2) The Secretary may approve the applicant, under subsection 273(1) of the Act, to conduct audits if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that the following additional requirements are met:
 - (a) the applicant is a fit and proper person (having regard to the matters referred to in section 372 of the Act);
 - (b) the applicant has the necessary competency (for example, the knowledge, training, skills or experience) to conduct audits;
 - (c) audits conducted by the applicant will be objective, independent, fair and accurate;

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- (d) the applicant will comply with Division 2 of this Part in relation to audits conducted by the applicant;
 - (e) the applicant will comply with the procedures for conducting audits that are necessary to ensure that:
 - (i) the requirements referred to in paragraphs (c) and (d) are met; and
 - (ii) an accurate assessment can be made of whether the requirements referred to in those paragraphs are met.
 - (3) For the purposes of paragraph (2)(c), the Secretary may consider any interests, pecuniary or otherwise, of the applicant that conflict or could conflict with the conduct of an audit by the applicant.
 - (4) The Secretary may refuse to approve the applicant to conduct audits if:
 - (a) the applicant has a relevant Commonwealth liability that has not been paid; or
 - (b) the applicant made a statement that was false, misleading or incomplete, or for which there were no reasonable grounds:
 - (i) in the application; or
 - (ii) in a document required to be provided under the Act; or
 - (c) the applicant gave information or a document that was false, misleading or incomplete, or for which there were no reasonable grounds:
 - (i) to the Secretary or to another person performing functions or exercising powers under the Act; or
 - (ii) to the Secretary or the Department under a prescribed agriculture law.

Note: The Secretary must not approve a person to conduct audits unless the Secretary is satisfied that the person satisfies, or will satisfy, certain training and qualification requirements determined by the Secretary (see subsections 273(3) and (4) of the Act).

9-10 Dealing with applications

- (1) For the purpose of making a decision in relation to an application under section 9-8, the Secretary may request the applicant to give the Secretary further specified information or documents relevant to the application.
- (2) A request under subsection (1):
 - (a) must be in writing; and
 - (b) must specify the period within which the request must be complied with; and
 - (c) may specify the manner in which the request is to be complied with.

9-11 Conditions of approval

- (1) The Secretary may approve an applicant, under subsection 273(1) of the Act, to conduct audits subject to any conditions the Secretary considers necessary.

Note: A decision to approve the applicant to conduct audits subject to conditions is a reviewable decision (see section 11-1 of this instrument) and the Secretary must give the applicant written notice of the decision (see section 382 of the Act).

- (2) Without limiting the Secretary's power under subsection (1), the conditions of an approval under subsection 273(1) of the Act may relate to the scope of audits the

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approved auditor is approved to conduct, including by reference to any of the following:

- (a) a kind of export operations;
- (b) aspects of a kind of export operations, such as whether:
 - (i) the operations comply, have complied, or will comply with applicable requirements of the Act; or
 - (ii) importing country requirements relating to operations of that kind are being, have been, or will be met; or
 - (iii) the operations are being, have been, or will be carried out in accordance with an approved arrangement;
- (c) a kind of export operations carried out at a kind of place (for example, a registered establishment).

9-12 Notice of decision

If the Secretary approves an applicant, under subsection 273(1) of the Act, to conduct audits, the Secretary must give the applicant a written notice stating the following:

- (a) that the applicant is approved to conduct audits;
- (b) the scope of the audits covered by the approval;
- (c) the date the approval takes effect;
- (d) that the approval remains in force for 12 months unless it is revoked earlier under section 9-15 of this instrument;
- (e) any conditions of the approval imposed under section 9-11 of this instrument.

9-13 Period of effect of approval

An approval of an individual, under subsection 273(1) of the Act, to conduct audits:

- (a) takes effect on the date stated in the notice given to the individual under section 9-12 of this instrument; and
- (b) remains in force for 12 months unless it is revoked earlier under section 9-15 of this instrument.

9-14 Imposing or varying conditions of approval

- (1) If an individual is approved, under subsection 273(1) of the Act, to conduct audits the Secretary may, if the Secretary considers it necessary to do so:
 - (a) impose conditions on the approval; or
 - (b) vary the conditions of the approval (including by imposing new conditions or removing conditions).

Note: A decision to impose conditions or vary the conditions of an approval to conduct audits is a reviewable decision (see section 11-1 of this instrument) and the Secretary must give the holder of the approval written notice of the decision (see section 382 of the Act).

- (2) If the Secretary imposes conditions on, or varies the conditions of, an individual's approval, the Secretary must give the individual a written notice stating:

-
- (a) the conditions imposed or the varied conditions (including any new conditions); and
 - (b) the reason for imposing or varying the conditions; and
 - (c) the date the conditions or varied conditions take effect.

9-15 Revocation of approval

- (1) The Secretary may revoke the approval of an individual to conduct audits if the individual requests the Secretary, in writing, to do so or the Secretary is satisfied of any of the following:
 - (a) the individual is no longer a fit and proper person (having regard to the matters referred to in section 372 of the Act);
 - (b) the individual does not have the necessary competency (for example, the knowledge, training, skills or experience) to conduct audits of the kind covered by the approval (including the conditions of the approval);
 - (c) the individual failed to show competency in conducting audits;
 - (d) an audit conducted by the individual, or an audit report given to the Secretary by the individual, was not objective, independent, fair or accurate;
 - (e) an audit conducted by the individual was not completed and the audit report did not give any reasonable explanation why the audit was not completed;
 - (f) an audit report given to the Secretary by the individual was incomplete;
 - (g) the individual failed to comply with a requirement prescribed by Division 2 of this Part that applied in relation to an audit conducted by the individual;
 - (h) the individual contravened a condition of the approval;
 - (i) the individual made a statement that was false, misleading or incomplete, or for which there were no reasonable grounds:
 - (i) in the application for approval; or
 - (ii) in a document required to be provided under the Act;
 - (j) the individual gave information or a document that was false, misleading or incomplete, or for which there were no reasonable grounds:
 - (i) to the Secretary or to another person performing functions or exercising powers under the Act; or
 - (ii) to the Secretary or the Department under a prescribed agriculture law.
- Note: A decision to revoke an individual's approval to conduct audits (other than at the request of the individual) is a reviewable decision (see section 11-1 of this instrument) and the Secretary must give the holder of the approval written notice of the decision (see section 382 of the Act).
- (2) For the purposes of paragraph (1)(b) or (c), the Secretary may assess the competency of an approved auditor at any time and in any way the Secretary considers appropriate.
 - (3) For the purposes of paragraph (1)(d), the Secretary may consider any interests, pecuniary or otherwise, of the individual that conflict or could conflict with the conduct of an audit by the individual.

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- (4) If the Secretary decides to revoke an individual's approval to conduct audits (other than at the request of the individual), the Secretary must give the individual a written notice stating:
 - (a) that the approval is to be revoked; and
 - (b) the reasons for the revocation; and
 - (c) the date the revocation is to take effect.

9-16 Register of approved auditors

- (1) The Secretary must keep a register of individuals who are approved under subsection 273(1) of the Act to conduct audits.
- (2) The register:
 - (a) may be kept at a place and in a form that the Secretary determines; and
 - (b) may be kept by electronic means; and
 - (c) must be publicly accessible.
- (3) The register must include the following information about each individual who is approved under subsection 273(1) of the Act to conduct audits:
 - (a) the individual's name;
 - (b) any conditions of the individual's approval.

9-17 Fit and proper person test

Fit and proper person test

- (1) For the purposes of paragraph 372(1)(d) of the Act, the following provisions of this instrument are prescribed:
 - (a) section 9-9 (decision to approve an individual to conduct audits);
 - (b) section 9-15 (decision to revoke an approval of an individual to conduct audits).
- (2) For the purposes of subparagraph 372(2)(e)(v) of the Act, section 9-8 of this instrument (application by individual for approval to conduct audits) is prescribed.
- (3) For the purposes of paragraph 372(4)(b) of the Act, an approved auditor is prescribed.

Notification of conviction of offence or order to pay pecuniary penalty

- (4) For the purposes of paragraph 374(1)(g) of the Act, an approved auditor is prescribed.

Part 2—Assessments

Division 1—General

9-18 References to assessment in this Part

In this Part, a reference to an assessment is a reference to an assessment of fish or fish products under Part 2 of Chapter 9 of the Act.

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Division 2—Carrying out assessments etc.

9-19 Circumstances in which assessment may be required or permitted

For the purposes of subsection 277(2) of the Act, the Secretary may require or permit an assessment to be carried out at any stage of operations to prepare prescribed fish or fish products for export.

9-20 Process to be followed after assessment completed

- (1) For the purposes of section 279 of the Act, this section makes provision for and in relation to the process to be followed after the completion of:
 - (a) an assessment that was required or permitted to be carried out under section 9-19 of this instrument; or
 - (b) an assessment that was required to be carried out under paragraph 241(c) of the Act for the purpose of making a decision in relation to:
 - (i) an application for an export permit for prescribed fish or fish products; or
 - (ii) an application to vary an export permit for prescribed fish or fish products or the conditions of such an export permit.
- (2) The assessor must give a written notice to the Secretary and the relevant person for the assessment stating whether the assessor reasonably believes the following in relation to the prescribed fish or fish products:
 - (a) that the requirements of the Act in relation to the export of the fish or fish products have been complied with, or will be complied with before the fish or fish products are imported into the importing country;
 - (b) that importing country requirements relating to the fish or fish products have been met, or will be met before the fish or fish products are imported into the importing country.

Note 1: For *assessor*, see section 12 of the Act.

Note 2: For the *relevant person* for an assessment, see section 278 of the Act.

- (3) A notice given by an assessor under subsection (2) must be signed and dated by the assessor.

Note: An assessor may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 368 and 369 of the Act).

Division 3—Approved assessors

9-21 Purpose of this Division

For the purposes of subsections 281(6) and (7) of the Act, this Division makes provision for and in relation to matters relating to the approval of individuals to carry out assessments.

9-22 Application for approval

- (1) An individual may apply to the Secretary to approve the individual, under subsection 281(1) of the Act, to carry out assessments.
- (2) An application must:
 - (a) if the Secretary has approved, in writing, a manner for making an application—be made in an approved manner; and
 - (b) if the Secretary has approved a form for making an application—include the information required by the form; and
 - (c) be accompanied by the following:
 - (i) written evidence of the applicant’s qualifications;
 - (ii) a document detailing the applicant’s experience to the extent that it is relevant to the work of an assessor;
 - (iii) a document setting out the procedures for carrying out assessments by the applicant;
 - (iv) if an application fee is prescribed by the *Export Control (Fees and Payments) Rules 2021*—the prescribed application fee.
- (3) An application is taken not to have been made if the application does not comply with the requirements referred to in subsection (2).

9-23 Secretary must decide whether to approve applicant to carry out assessments

- (1) On receiving an application under section 9-22, the Secretary must decide:
 - (a) to approve the applicant, under subsection 281(1) of the Act, to carry out assessments; or
 - (b) to refuse to approve the applicant to carry out assessments.

Note: A decision to refuse to approve the applicant to carry out assessments is a reviewable decision (see section 11-1 of this instrument) and the Secretary must give the applicant written notice of the decision (see section 382 of the Act).

- (2) The Secretary may approve the applicant, under subsection 281(1) of the Act, to carry out assessments if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that the following additional requirements are met:
 - (a) the applicant is a fit and proper person (having regard to the matters referred to in section 372 of the Act);
 - (b) the applicant has the necessary competency (for example, the knowledge, training, skills or experience) to carry out assessments;

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- (c) assessments carried out by the applicant will be objective, independent, fair and accurate;
 - (d) the applicant will comply with Division 2 of this Part in relation to assessments carried out by the applicant;
 - (e) the applicant will comply with the procedures for carrying out assessments that are necessary to ensure that:
 - (i) the requirements referred to in paragraphs (c) and (d) are met; and
 - (ii) an accurate assessment can be made of whether the requirements referred to in those paragraphs are met.
- (3) For the purposes of paragraph (2)(c), the Secretary may consider any interests, pecuniary or otherwise, of the applicant that conflict or could conflict with the conduct of an assessment by the applicant.
- (4) The Secretary may refuse to approve the applicant to carry out assessments if:
- (a) the applicant has a relevant Commonwealth liability that has not been paid; or
 - (b) the applicant made a statement that was false, misleading or incomplete, or for which there were no reasonable grounds:
 - (i) in the application; or
 - (ii) in a document required to be provided under the Act; or
 - (c) the applicant gave information or a document that was false, misleading or incomplete, or for which there were no reasonable grounds:
 - (i) to the Secretary or to another person performing functions or exercising powers under the Act; or
 - (ii) to the Secretary or the Department under a prescribed agriculture law.

Note: The Secretary must not approve a person to carry out assessments unless the Secretary is satisfied that the person satisfies, or will satisfy, certain training and qualification requirements determined by the Secretary (see subsections 281(3) and (4) of the Act).

9-24 Dealing with applications

- (1) For the purpose of making a decision in relation to an application under section 9-22, the Secretary may request the applicant to give the Secretary further specified information or documents relevant to the application.
- (2) A request under subsection (1):
 - (a) must be in writing; and
 - (b) must specify the period within which the request must be complied with; and
 - (c) may specify the manner in which the request is to be complied with.

9-25 Conditions of approval

- (1) The Secretary may approve an applicant, under subsection 281(1) of the Act, to carry out assessments subject to any conditions the Secretary considers necessary.

Note: A decision to approve the applicant to carry out assessments subject to conditions is a reviewable decision (see section 11-1 of this instrument) and the Secretary must give the applicant written notice of the decision (see section 382 of the Act).

- (2) Without limiting the Secretary's power under subsection (1), the conditions of an approval under subsection 281(1) of the Act may relate to the scope of assessments the approved assessor is approved to carry out, including by reference to any of the following:
- (a) a kind of export operations;
 - (b) aspects of a kind of export operations, such as whether the operations are being, or have been, carried out in accordance with an approved arrangement;
 - (c) a kind of export operations carried out at a kind of place (for example, a registered establishment).

9-26 Notice of decision

If the Secretary approves an applicant, under subsection 281(1) of the Act, to carry out assessments, the Secretary must give the applicant a written notice stating the following:

- (a) that the applicant is approved to carry out assessments of fish or fish products under Part 2 of Chapter 9 of the Act;
- (b) the scope of the assessments covered by the approval;
- (c) the date the approval takes effect;
- (d) that the approval remains in force for 12 months unless it is revoked earlier under section 9-29 of this instrument;
- (e) any conditions of the approval imposed under section 9-25 of this instrument.

9-27 Period of effect of approval

An approval of an individual, under subsection 281(1) of the Act, to carry out assessments:

- (a) takes effect on the date stated in the notice given to the individual under section 9-26 of this instrument; and
- (b) remains in force for 12 months unless it is revoked earlier under section 9-29 of this instrument.

9-28 Imposing or varying conditions of approval

- (1) If an individual is approved, under subsection 281(1) of the Act, to carry out assessments the Secretary may, if the Secretary considers it necessary to do so:
- (a) impose conditions on the approval; or
 - (b) vary the conditions of the approval (including by imposing new conditions or removing conditions).

Note: A decision to impose conditions or vary the conditions of an approval to carry out assessments is a reviewable decision (see section 11-1 of this instrument) and the Secretary must give the holder of the approval written notice of the decision (see section 382 of the Act).

- (2) If the Secretary imposes conditions on, or varies the conditions of, an individual's approval, the Secretary must give the individual a written notice stating:

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- (a) the conditions imposed or the varied conditions (including any new conditions); and
- (b) the reason for imposing or varying the conditions; and
- (c) the date the conditions or varied conditions take effect.

9-29 Revocation of approval

- (1) The Secretary may revoke the approval of an individual to carry out assessments if the individual requests the Secretary, in writing, to do so or the Secretary is satisfied of any of the following:
 - (a) the individual is no longer a fit and proper person (having regard to the matters referred to in section 372 of the Act);
 - (b) the individual does not have the necessary competency (for example, the knowledge, training, skills or experience) to carry out assessments;
 - (c) the individual failed to show competency in carrying out assessments;
 - (d) an assessment carried out by the individual was not objective, fair or accurate;
 - (e) the individual did not complete an assessment and did not give any reasonable explanation why the assessment was not completed;
 - (f) the individual failed to comply with a requirement prescribed by Division 2 of this Part that applied in relation to an assessment carried out by the individual;
 - (g) the individual contravened a condition of the approval;
 - (h) the individual made a statement that was false, misleading or incomplete, or for which there were no reasonable grounds:
 - (i) in the application for approval; or
 - (ii) in a document required to be provided under the Act;
 - (i) the individual gave information or a document that was false, misleading or incomplete, or for which there were no reasonable grounds:
 - (i) to the Secretary or to another person performing functions or exercising powers under the Act; or
 - (ii) to the Secretary or the Department under a prescribed agriculture law.

Note: A decision to revoke an individual's approval to carry out assessments (other than at the request of the individual) is a reviewable decision (see section 11-1 of this instrument) and the Secretary must give the holder of the approval written notice of the decision (see section 382 of the Act).

- (2) For the purposes of paragraph (1)(b) or (c), the Secretary may assess the competency of an approved assessor at any time and in any way the Secretary considers appropriate.
- (3) For the purposes of paragraph (1)(d), the Secretary may consider any interests, pecuniary or otherwise, of the individual that conflict or could conflict with the carrying out of an assessment by the individual.
- (4) If the Secretary decides to revoke an individual's approval to carry out assessments (other than at the request of the individual), the Secretary must give the individual a written notice stating:
 - (a) that the approval is to be revoked; and
 - (b) the reasons for the revocation; and

- (c) the date the revocation is to take effect.

9-30 Register of approved assessors

- (1) The Secretary must keep a register of individuals who are approved under subsection 281(1) of the Act to carry out assessments.
- (2) The register:
 - (a) may be kept at a place and in a form that the Secretary determines; and
 - (b) may be kept by electronic means; and
 - (c) must be publicly accessible.
- (3) The register must include the following information about each individual who is approved under subsection 281(1) of the Act to carry out assessments:
 - (a) the individual's name;
 - (b) any conditions of the individual's approval.

9-31 Fit and proper person test

Fit and proper person test

- (1) For the purposes of paragraph 372(1)(d) of the Act, the following provisions of this Division are prescribed:
 - (a) section 9-23 (decision to approve an individual to carry out assessments);
 - (b) section 9-29 (decision to revoke an approval of an individual to carry out assessments).
- (2) For the purposes of subparagraph 372(2)(e)(v) of the Act, section 9-22 of this instrument (application by individual for approval to carry out assessments) is prescribed.
- (3) For the purposes of paragraph 372(4)(b) of the Act, an approved assessor is prescribed.

Notification of conviction of offence or order to pay pecuniary penalty

- (4) For the purposes of paragraph 374(1)(g) of the Act, an approved assessor is prescribed.

Part 3—Powers of the Secretary

9-32 Decisions that may be made by operation of computer program

Kinds of decisions

- (1) For the purposes of paragraph 286(2)(a) of the Act, the following decisions may be made by the operation of a computer program (an **authorised computer program**) under an arrangement made under subsection 286(1) of the Act:
 - (a) a decision under paragraph 67(1)(a) of the Act to issue a government certificate in relation to fish or fish products;
 - (b) a decision under paragraph 225(1)(a) of the Act to issue an export permit for prescribed fish or fish products.

Persons who may use computer program

- (2) For the purposes of paragraph 286(2)(b) of the Act, the following persons may use an authorised computer program:
 - (a) the occupier of a registered establishment where operations to prepare fish or fish products for export are carried out;
 - (b) the holder of an approved arrangement for operations to prepare fish or fish products for export at a registered establishment;
 - (c) an exporter of fish or fish products;
 - (d) a person who provides services to, and is authorised in writing by, the occupier, holder or exporter referred to in paragraph (a), (b) or (c) of this subsection to use the computer program to make the decision;
 - (e) an authorised officer;
 - (f) an APS employee in the Department;
 - (g) a person performing services for the Department under a contract;if the Secretary has given the person a unique identifier to enable the person to access the computer program.

Conditions of use of computer program

- (3) For the purposes of paragraph 286(2)(c) of the Act, a person who may use an authorised computer program under subsection (2) of this section must:
 - (a) be satisfied on reasonable grounds that information entered into the computer program by the person for the purpose of enabling decisions to be made by operation of the computer program is true and correct; and
 - (b) ensure that the information is accurately entered into the computer program.

Part 4—Authorised officers

Division 1—Third party authorised officers

9-33 Requirement to be third party authorised officer—fit and proper person etc.

Other requirements that must be met for person to be third party authorised officer

- (1) For the purposes of paragraph 291(7)(c) of the Act, it is a requirement for a person to be authorised to be a third party authorised officer for the purposes of performing functions and exercising powers in relation to fish or fish products that the person be a fit and proper person (having regard to the matters referred to in section 372 of the Act).

Fit and proper person test

- (2) For the purposes of paragraph 372(1)(d) of the Act, subsection (1) of this section is prescribed.
- (3) For the purposes of subparagraph 372(2)(e)(v) of the Act, subsection 291(3) of the Act (application by person to be third party authorised officer for the purposes of performing functions and exercising powers in relation to fish or fish products) is prescribed.
- (4) For the purposes of paragraph 372(4)(b) of the Act, a person who is a third party authorised officer who may perform functions and exercise powers in relation to fish or fish products is prescribed.

Notification of conviction of offence or order to pay pecuniary penalty

- (5) For the purposes of subparagraph 374(1)(g) of the Act, a third party authorised officer who may perform functions and exercise powers in relation to fish or fish products is prescribed.

Division 2—Functions and powers

9-34 Purpose of this Division

For the purposes of section 300 of the Act, this Division confers functions and powers on authorised officers, or classes of authorised officers, that are necessary or convenient to be performed or exercised for the purposes of achieving the objects of the Act in relation to fish or fish products for export.

Note: An authorised officer may only perform functions or exercise powers conferred on an authorised officer by the Act that are specified in the authorised officer's instrument of authorisation (see subsection 301(1) of the Act).

9-35 Inspecting establishments and securing areas, equipment, facilities or other things

- (1) An authorised officer may inspect:
 - (a) an establishment, or any area of an establishment, where operations are carried out to prepare or transport fish or fish products; and
 - (b) any facilities or equipment or other things at the establishment or area of the establishment; and
 - (c) any services provided at the establishment or area of the establishment.

Note: Examples of other things that may be at an establishment or area of an establishment are vehicles or other conveyances.

- (2) If an authorised officer considers it is necessary to enable functions to be performed, or powers to be exercised, under the Act at an establishment in relation to fish or fish products that have been prepared at the establishment or transported to or from the establishment, an authorised officer may secure an area of the establishment, or facilities or equipment or any other thing at the establishment, that has been, or will be, inspected under subsection (1), by attaching, or applying, an identification tag or similar means of identification to the area, facilities, equipment or other thing.
- (3) An identification tag, or other means of identification, used under subsection (2) must be in a form approved by the Secretary.
- (4) A person must not remove an identification tag, or other means of identification, that has been attached or applied to an area of an establishment, or facilities, equipment or any other thing, under subsection (2) unless the person:
 - (a) is an authorised officer; or
 - (b) is acting in accordance with a direction given by an authorised officer.

Note: For how a direction may be given by an authorised officer, see section 309 of the Act.

9-36 Securing and identifying establishment or conveyance etc.

- (1) An authorised officer may secure or retain and identify, for the purpose of carrying out an assessment under Part 2 of Chapter 9 of the Act or an inspection of fish or fish products, or applying a treatment or disposition to fish or fish products, any of the following:

- (a) a thing found at an establishment that is used, or apparently used, for operations to prepare fish or fish products;
 - (b) a thing found in or on a conveyance that is used, or apparently used, to transport fish or fish products;
 - (c) an area of a registered establishment that is used, or apparently used, for operations to prepare fish or fish products, including any facilities or equipment or services provided in that area;
 - (d) an establishment (other than a registered establishment) that is used, or apparently used, for operations to prepare fish or fish products;
 - (e) a conveyance that is used, or apparently used, to transport fish or fish products.
- (2) For the purposes of subsection (1), a thing, an area, an establishment or a conveyance must be identified by attaching or applying an identification tag, or similar means of identification, to the thing, area, establishment or conveyance.
- (3) An identification tag, or other means of identification, used under subsection (2) must be in a form approved by the Secretary.
- (4) A person must not remove an identification tag, or other means of identification, that has been attached or applied to a thing, an area, an establishment or a conveyance under subsection (2) unless the person:
- (a) is an authorised officer; or
 - (b) is acting in accordance with a direction given by an authorised officer.

Note: For how a direction may be given by an authorised officer, see section 309 of the Act.

9-37 Interference with identified establishment or conveyance etc.

A person must not interfere with or use any thing, area, establishment or conveyance identified under section 9-36, or move any thing or conveyance identified under section 9-36, unless the person:

- (a) is an authorised officer; or
- (b) is acting in accordance with a direction given by an authorised officer.

Division 3—Directions to deal with non-compliance with the Act etc.

9-38 Other grounds for giving direction

For the purposes of item 8 of the table in subsection 305(1) of the Act:

- (a) each person (a *relevant person*) referred to in column 1 of an item in the following table is prescribed; and
- (b) each ground referred to in column 2 of that item is prescribed in relation to the relevant person prescribed by that item.

Directions to deal with non-compliance with the requirements of the Act etc.

Item	Column 1 Relevant person	Column 2 Grounds for giving direction
1	The applicant for a government certificate in relation to prescribed fish or fish products	Any of the following: <ol style="list-style-type: none"> (a) some or all of the fish or fish products do not comply, or are not likely to comply, with a requirement of the Act that applies in relation to the fish or fish products; (b) some or all of the fish or fish products do not meet, or are not likely to meet, an importing country requirement relating to the fish or fish products; (c) a matter to be stated in the government certificate in relation to the fish or fish products is not true and correct
2	The holder of a government certificate in relation to prescribed fish or fish products	Any of the following: <ol style="list-style-type: none"> (a) some or all of the fish or fish products do not comply, or are not likely to comply, with a requirement of the Act that applies in relation to the fish or fish products; (b) some or all of the fish or fish products do not meet, or are not likely to meet, an importing country requirement relating to the fish or fish products; (c) a matter to be stated in the government certificate in relation to the fish or fish products is not true and correct
3	The applicant for an export permit for prescribed fish or fish products	Either of the following: <ol style="list-style-type: none"> (a) the fitness for human consumption of some or all of the fish or fish products has been or is likely to be jeopardised; (b) it is likely that the integrity of some or all of the fish or fish products cannot be ensured.
4	The holder of an export permit for prescribed fish or fish products	Either of the following: <ol style="list-style-type: none"> (a) the fitness for human consumption of some or all of the fish or fish products has been or is likely to be jeopardised; (b) it is likely that the integrity of some or all of the

Directions to deal with non-compliance with the requirements of the Act etc.

Item	Column 1	Column 2
	Relevant person	Grounds for giving direction
		fish or fish products cannot be ensured.

Division 4—Miscellaneous

9-39 Circumstances in which identity card need not be carried

For the purposes of subsection 306(5) of the Act, an authorised officer or approved auditor need not carry an identity card in an establishment, or a part of an establishment, if:

- (a) it would be unsafe or unhygienic to do so; or
- (b) there would be a risk of the card, or of fish or fish products, being contaminated.

Chapter 10—Compliance and enforcement

10-1 Samples taken in exercising monitoring or investigation powers

- If a sample is taken as permitted by paragraph 327(2)(a) of the Act (additional monitoring power) or subsection 330(2) of the Act (additional investigation power), the sample must be:
 - (a) identified with a mark or a tag; and
 - (b) kept in the custody or control of an authorised officer until whichever of the following first occurs:
 - (i) the sample is destroyed during testing or analysis in accordance with section 412 of the Act;
 - (ii) the sample is given to an analyst appointed under section 413 of the Act;
 - (iii) the sample is otherwise disposed of.

10-2 Dealing with things seized in exercising investigation powers

If a thing has been seized at premises that have been entered under an investigation warrant or under subsection 347(1) of the Act, the thing must be:

- (a) identified with a mark or a tag; and
- (b) kept in the custody or control of an authorised officer until whichever of the following first occurs:
 - (i) the thing is given to an analyst appointed under section 413 of the Act;
 - (ii) the thing is destroyed during testing or analysis in accordance with section 412 of the Act;
 - (iii) the thing is forfeited in accordance with subsection 416(1) of the Act;
 - (iv) the thing is destroyed or otherwise disposed of in accordance with section 418 of the Act;
 - (v) the thing is returned in accordance with subsection 66(4) of the Regulatory Powers Act;
 - (vi) the thing is disposed of in accordance with section 68 of the Regulatory Powers Act.

Note: Subsection 347(1) of the Act provides for entry, in certain circumstances, to premises that are, or that form part of, a registered establishment.

Section 11-1

Chapter 11—Miscellaneous

Part 1—Review of decisions

11-1 Reviewable decisions

For the purposes of subsection 381(2) of the Act:

- (a) each decision referred to in column 1 of an item in the following table is a reviewable decision; and
- (b) the person referred to in column 3 of that item is the relevant person for the reviewable decision.

Reviewable decisions			
Item	Column 1 Reviewable decision	Column 2 Provision of this instrument under which the reviewable decision is made	Column 3 Relevant person for the reviewable decision
1	To refuse to approve an individual to conduct audits	Paragraph 9-9(1)(b)	The individual who applied for the approval
2	To approve an individual to conduct audits subject to conditions	Subsection 9-11(1)	The individual who applied for the approval
3	To impose conditions on, or vary the conditions of, an approval of an individual to conduct audits	Subsection 9-14(1)	The individual who is approved
4	To revoke the approval of an individual to conduct audits (other than at the request of the individual)	Subsection 9-15(1)	The individual whose approval has been revoked
5	To refuse to approve an individual to carry out assessments	Paragraph 9-23(1)(b)	The individual who applied for the approval
6	To approve an individual to carry out assessments subject to conditions	Subsection 9-25(1)	The individual who applied for the approval
7	To impose conditions on, or vary the conditions of, an approval of an individual to carry out assessments	Subsection 9-28(1)	The individual who is approved

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Reviewable decisions			
Item	Column 1 Reviewable decision	Column 2 Provision of this instrument under which the reviewable decision is made	Column 3 Relevant person for the reviewable decision
8	To revoke the approval of an individual to carry out assessments (other than at the request of the individual)	Subsection 9-29(1)	The individual whose approval has been revoked

Part 2—Records

11-2 Purpose of this Part

For the purposes of subsections 408(1) and (2) of the Act, this Part makes provision for and in relation to the retention of records in relation to fish or fish products.

Note: A person may commit an offence of strict liability if the person is required to retain a record in accordance with a provision of this Part and the person fails to comply with the requirement (see subsection 408(3) of the Act).

11-3 General requirements for records

- (1) A record that is required to be retained under this Part in relation to fish or fish products must be:
 - (a) in English; and
 - (b) if the record was required to be in another language to meet importing country requirements—in that other language; and
 - (c) dated; and
 - (d) accurate, legible and able to be audited.
- (2) If a person is required to retain a document under this Part, the person is taken to have complied with the requirement if:
 - (a) the person is required, under a law of the Commonwealth or a State or Territory or in accordance with ordinary commercial practice, to give the document to another person; and
 - (b) the person gives the document to the other person as required; and
 - (c) the person retains a copy of the document.

11-4 Government certificates

- (1) A person to whom a government certificate in relation to fish or fish products is issued under the Act must retain the certificate in a secure place when it is not being used.
- (2) Subsection (1) does not apply in relation to a government certificate that was issued by electronic means.

11-5 Export permits

- (1) A person to whom an export permit for prescribed fish or fish products is issued under the Act must retain the export permit in a secure place when it is not being used.
- (2) Subsection (1) does not apply in relation to an export permit that was issued by electronic means.

11-6 Records to be retained by exporter

- (1) An exporter of prescribed fish or fish products must retain the following records:
 - (a) each application by the exporter for a government certificate in relation to fish or fish products;
 - (b) each application by the exporter for an export permit for prescribed fish or fish products;
 - (c) each declaration given under paragraph 5-44(1)(j) or (k) that relates to prescribed fish or fish products for which the exporter made an application for a government certificate or an export permit;
 - (d) each other document:
 - (i) that is made by the exporter or that comes into the exporter's possession; and
 - (ii) that is relevant to showing whether the exporter has complied, or is complying, with the applicable requirements of the Act and whether importing country requirements have been, or are being, met in relation to the export of prescribed fish or fish products.

Note: A reference to the Act includes a reference to this instrument (see section 1-6 and subsection 432(1) of the Act).

- (2) The exporter must retain each record referred to in subsection (1) for at least 3 years starting on the day the record is made by the exporter or comes into the exporter's possession (as the case may be).

11-7 Records to be retained by occupier of registered establishment

- (1) The occupier of an establishment that is registered for a kind of export operations in relation to prescribed fish or fish products must retain each document:
 - (a) that is made by the occupier or that comes into the occupier's possession; and
 - (b) that is relevant to showing whether the occupier has complied, or is complying, with the applicable requirements of the Act (including whether the conditions of the registration of the establishment have been, and are being, complied with).

Note: A reference to the Act includes a reference to this instrument (see section 1-6 and subsection 432(1) of the Act).

- (2) The occupier of the registered establishment must retain each record referred to in subsection (1) for at least 3 years starting on the day the record is made by the occupier or comes into the occupier's possession (as the case may be).

11-8 Records to be retained by holder of approved arrangement

- (1) The holder of an approved arrangement for a kind of export operations in relation to prescribed fish or fish products must retain each document:
 - (a) that is made by the holder or that comes into the holder's possession; and
 - (b) that is relevant to showing whether the holder has complied, or is complying, with:
 - (i) the applicable requirements of the Act; and
 - (ii) the approved arrangement; and

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(iii) the conditions of the approved arrangement.

Note: For example, the holder of an approved arrangement must retain each record made under subsections 5-47(2) (verification of compliance), 5-48(2) (action to address non-compliance) and 5-49(3) (internal audits and management reviews).

- (2) The holder of the approved arrangement must retain each record referred to in subsection (1) for at least 3 years starting on the day the record is made by the holder or comes into the holder's possession (as the case may be).

11-9 Records relating to official marking devices

A person who is required to make a record by section 8-32 must retain each record made under that section for 3 years after making it.

11-10 Records must not be altered or defaced during retention period

- (1) A record that is retained as required under this Part must not be altered or defaced during the period (the *retention period*) in which it is required to be retained.
- (2) However, subsection (1) does not prevent notations or markings being made on the record in accordance with ordinary practice.
- (3) If the record (the *original record*) is altered or defaced during the retention period, the person who is required to retain the original record must also retain, during the retention period, each document:
- (a) that the person creates or that comes into the person's possession; and
 - (b) that shows how the original record was altered or defaced.

Part 3—Samples

11-11 Microbiological limits—taking, testing and analysing samples

- (1) For the purposes of paragraph 410(2)(a) of the Act and subject to subsection (3) of this section, the following methods of taking, testing and analysing samples of fish or fish products and their ingredients to verify compliance with microbiological limits in the Food Standards Code are prescribed:
 - (a) the method specified in Australian/New Zealand Standard AS/NZS 1766:1998, *Methods for the Microbiological Examination of Food*, published jointly by, or on behalf of, Standards Australia and Standards New Zealand, as in force at the commencement of this instrument;
 - (b) an equivalent method of examination in accordance with Australian/New Zealand Standard AS/NZS 4659:1999, *Guide to Determining the Equivalence of Food Microbiology Test Methods*, published jointly by, or on behalf of, Standards Australia and Standards New Zealand, as in force at the commencement of this instrument.
- (2) The method must also comply with any additional requirements of the Food Standards Code.
- (3) If:
 - (a) importing country requirements relating to the fish or fish products provide for a method of taking, testing and analysing samples of the fish or fish products or their ingredients to verify compliance with microbiological limits that is different from the method referred to in paragraph (1)(a) or (b); and
 - (b) an approved arrangement for operations to prepare the fish or fish products for export provides for the different method; and
 - (c) the approved arrangement provides for a system of controls to be used to ensure compliance with the different method;then the different method is prescribed.

11-12 Storage of samples

- (1) For the purposes of section 411 of the Act, a sample that may be tested or analysed under the Act must be held under conditions that are unlikely to affect the result of any testing or analysis of the sample.
- (2) Subsection (1) does not apply in relation to a sample that may be tested or analysed in the performance of functions or duties or the exercise of powers under Chapter 10 of the Act (compliance and enforcement) or the Regulatory Powers Act.

Part 4—Damaged or destroyed fish or fish products

11-13 Division of compensation between owners

For the purposes of paragraph 420(2)(b) of the Act, compensation in respect of fish or fish products that are owned by 2 or more owners must be divided among those owners so that each owner is paid an amount of compensation that is equal to the proportion that the Secretary is satisfied represents the owner's interest in the fish or fish products at the time the fish or fish products were damaged or destroyed.

11-14 Amount of compensation

Damaged fish or fish products

- (1) For the purposes of subsection 420(5) of the Act, the amount of compensation payable under subsection 419(1) of the Act in respect of fish or fish products that are damaged by a person in the course of performing functions or duties, or exercising powers, under the Act is the lesser of the following amounts:
 - (a) the amount that the Secretary determines was the market value of the fish or fish products immediately before they were damaged;
 - (b) the cost to repair the damage.

Note: Subsection 419(2) of the Act provides that compensation is not payable in respect of goods that are damaged as a result of samples of the goods being taken:

- (a) during an audit conducted in relation to the goods under Part 1 of Chapter 9 of the Act; or
- (b) during an assessment of the goods carried out under Part 2 of that Chapter; or
- (c) as permitted by subsection 327(2) or 330(2) of the Act.

Destroyed fish or fish products

- (2) For the purposes of subsection 420(5) of the Act, the amount of compensation payable under subsection 419(1) of the Act in respect of fish or fish products that are destroyed under the Act is the amount that the Secretary determines was the market value of the fish or fish products immediately before they were destroyed.

Part 5—Relevant Commonwealth liabilities

11-15 Circumstances in which relevant Commonwealth liability of a person is taken to have been paid

Purpose of this section

- (1) For the purposes of section 431 of the Act, this section prescribes circumstances in which a relevant Commonwealth liability of a person is taken to have been paid for the purposes of any of the following provisions of the Act (a **relevant provision**):
- (a) paragraph 112(2)(b) (registration of establishment);
 - (b) paragraph 117(2)(b) (renewal of registration of establishment);
 - (c) paragraph 151(2)(b) (approval of proposed arrangement);
 - (d) paragraph 156(2)(b) (renewal of approved arrangement);
 - (e) paragraph 161(3)(a) (variation of approved arrangement).

Note: For **relevant Commonwealth liability**, see section 12 of the Act.

Payment undertaking may be given

- (2) A relevant Commonwealth liability of a person is taken to have been paid for the purposes of a relevant provision if:
- (a) the person, or another person, has given a written undertaking (a **payment undertaking**) to the Secretary to pay the amount of the relevant Commonwealth liability; and
 - (b) the payment undertaking includes a term that the relevant Commonwealth liability is to be reduced by each amount paid in accordance with the undertaking; and
 - (c) the Secretary has accepted the payment undertaking, having considered the following matters:
 - (i) the financial position of the person who gave the payment undertaking;
 - (ii) the nature and likely cost of the export operations to which a decision under the relevant provision relates;
 - (iii) whether the person who gave the payment undertaking will be able to comply with the undertaking and, if applicable, meet the cost of the export operations referred to in subparagraph (ii);
 - (iv) any other relevant considerations.
- (3) A payment undertaking may be given by a person in relation to:
- (a) a relevant Commonwealth liability of the person; or
 - (b) a relevant Commonwealth liability of another person.

Payment undertaking may relate to 2 or more relevant Commonwealth liabilities

- (4) A single payment undertaking may relate to 2 or more relevant Commonwealth liabilities.

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- (5) If:
- (a) a payment undertaking relates to 2 or more relevant Commonwealth liabilities; or
 - (b) a person has given 2 or more payment undertakings in relation to different relevant Commonwealth liabilities of the person or of another person;
- the Secretary may determine the order in which payments are to be applied to reduce the outstanding relevant Commonwealth liabilities.

Variation of payment undertaking

- (6) A payment undertaking may be varied at any time by agreement between the Secretary and the person who gave the undertaking.
- (7) The Secretary may agree to a variation of a payment undertaking if:
- (a) having considered the matters referred to in paragraph (2)(c), the Secretary considers the variation is appropriate; and
 - (b) the variation does not reduce the amount of any relevant Commonwealth liability covered by the undertaking that has not been paid.

Chapter 12—Transitional provisions

Part 1—Preliminary

12-1 Definitions

In this Chapter:

commencement time means the time when section 3 of the *Export Control Act 2020* commences.

old Export Control (Fish) Orders means the *Export Control (Fish and Fish Products) Orders 2005*, as in force immediately before the commencement time.

old Export Control (General) Order means the *Export Control (Prescribed Goods—General) Order 2005*, as in force immediately before the commencement time.

Part 2—Approved arrangements

12-2 Information and declarations given before commencement time

- (1) This section applies if information and declarations had been given under subclause 7.1 of Schedule 8 to the old Export Control (Fish) Orders to a consignee that is the occupier of a registered establishment in relation to fish or fish products that were at the registered establishment immediately before the commencement time.
- (2) At the commencement time:
 - (a) the information and declarations are taken to be the information and declarations required to be given to the occupier of the registered establishment by section 5-44 of this instrument in relation to the fish or fish products; and
 - (b) the information and declarations are taken to have been given in accordance with paragraph 5-44(2)(b) of this instrument.

Part 3—Other matters relating to export

Division 1—Trade descriptions

12-3 Request for translation not complied with before commencement time

If an authorised officer had given a person written notice under suborder 82.1 of the old Export Control (Fish) Orders requesting a translation of part of a trade description or other information and the request had not been complied with before the commencement time, the notice continues to have effect after the commencement time as if it were a request given to the person under subsection 8-3(3) of this instrument.

Division 2—Official marks

12-4 Person approved before commencement time to manufacture an official mark

- (1) This section applies in relation to a person who, immediately before the commencement time, was approved by the Secretary under subsection 13.18(2) of the old Export Control (General) Order to manufacture an official mark in relation to prescribed fish or fish products.
- (2) The person is taken, at the commencement time, to have been given a written approval by the Secretary under paragraph 8-15(c) of this instrument to manufacture or supply the official mark at a registered establishment in relation to prescribed fish or fish products.

12-5 Person approved before commencement time to possess an official mark

- (1) This section applies in relation to a person who, immediately before the commencement time, was approved by the Secretary under paragraph 13.18(3)(e) of the old Export Control (General) Order as a person who may possess an official mark (other than an official mark that has been applied to goods) in a specified registered establishment in relation to prescribed fish or fish products.
- (2) The person is taken, at the commencement time, to have been given a written approval by the Secretary under paragraph 8-16(d) of this instrument to possess the official mark at the registered establishment in relation to prescribed fish or fish products.

12-6 Person approved before commencement time to apply an official mark

- (1) This section applies in relation to a person who, immediately before the commencement time, was approved by the Secretary under paragraph 13.18(3)(e) of the old Export Control (General) Order as a person who may apply an official mark in a specified registered establishment in relation to prescribed fish or fish products.
- (2) The person is taken, at the commencement time, to have been given a written approval by the Secretary under paragraph 8-17(c) of this instrument to apply the official mark at the registered establishment in relation to prescribed fish or fish products.

Division 3—Official marking devices

12-7 Person approved before commencement time to manufacture an official marking device

- (1) This section applies in relation to a person who, immediately before the commencement time, was a person approved by the Secretary under subsection 13.18(2) of the old Export Control (General) Order to manufacture an official marking device that is capable of being used to apply an official mark to prescribed fish or fish products.
- (2) The person is taken, at the commencement time, to have been given a written approval by the Secretary under paragraph 8-29(1)(c) of this instrument to manufacture or supply the official marking device.

12-8 Person approved before commencement time to possess an official marking device

- (1) This section applies in relation to a person who, immediately before the commencement time, was a person approved by the Secretary under subsection 13.18(2) of the old Export Control (General) Order to possess an official marking device that is capable of being used to apply an official mark to prescribed fish or fish products.
- (2) The person is taken, at the commencement time, to have been given a written approval by the Secretary under paragraph 8-29(1)(c) of this instrument to possess the official marking device.

Part 4—Powers and officials

Division 1—Approved auditors

12-9 Application for approval as auditor not decided, or notice of decision not given, before commencement time

- (1) This section applies in relation to an application to the Secretary by an individual for approval as an approved auditor that had been made under subclause 2.1 of Schedule 10 to the old Export Control (Fish) Orders if:
 - (a) no decision on the application had been made before the commencement time; or
 - (b) a decision on the application had been made before the commencement time but written notice of the decision had not been given to the applicant before that time.

Decision not made before commencement time

- (2) If no decision on the application had been made before the commencement time:
 - (a) the application is taken after the commencement time to be an application made under subsection 9-8(1) of this instrument to the Secretary to approve the individual, under subsection 273(1) of the Act, to conduct audits; and
 - (b) subsections 9-8(2) and (3) of this instrument do not apply in relation to the application.

Decision made before commencement time but notice not given before that time

- (3) If a decision on the application had been made before the commencement time but the Secretary had not notified the applicant of the decision before that time, the Secretary must, as soon as practicable after that time, give the applicant written notice of the decision.
- (4) If the decision referred to in subsection (3) was to approve the applicant as an approved auditor:
 - (a) the decision is taken to be a decision under paragraph 9-9(1)(a) of this instrument; and
 - (b) the Secretary must give the applicant a written notice in accordance with section 9-12 of this instrument.
- (5) If the decision referred to in subsection (3) was to refuse to approve the applicant as an approved auditor, the decision is taken to be a decision under paragraph 9-9(1)(b) of this instrument.

Note: A decision under paragraph 9-9(1)(b) of this instrument to refuse to approve the applicant to conduct audits is a reviewable decision (see section 11-1 of this instrument) and the Secretary must give the applicant written notice of the decision (see section 382 of the Act).

12-10 Request for further information not complied with before commencement time

- (1) If the Secretary had requested an applicant for approval as an approved auditor to provide further specified information or documents under subclause 3.1 of Schedule 10 to the old Export Control (Fish) Orders and the request had not been complied with before the commencement time, the request must be complied with after the commencement time as if it were a request made by the Secretary under subsection 9-10(1) of this instrument.
- (2) If the request did not specify the period within which the request must be complied with, it must be complied with as soon as practicable.

12-11 Decision to revoke approval as auditor decided, but notice not given, before commencement time

- (1) If the Secretary had made a decision under subclause 11.1 of Schedule 10 to the old Export Control (Fish) Orders to revoke the approval of a person as an approved auditor but had not notified the person of the decision before the commencement time, the Secretary must, as soon as practicable after that time, give the person written notice of the decision.
- (2) The decision is taken to be a decision under subsection 9-15(1) of this instrument.

Note: A decision under subsection 9-15(1) of this instrument to revoke an individual's approval to conduct audits (other than at the request of the individual) is a reviewable decision (see section 11-1 of this instrument) and the Secretary must give the holder of the approval written notice of the decision (see section 382 of the Act).

Division 2—Assessments

12-12 Verification by authorised officer before commencement time

- (1) This section applies if an authorised officer had, under suborder 8.1 to Schedule 9 to the Old Export Control (Fish) Orders, given a written verification of matters referred to in paragraph 8.1(b) to that Schedule in relation to prescribed fish or fish products that had not been exported before the commencement time.
- (2) The written verification is taken, at the commencement time, to be a notice to the Secretary under subsection 9-20(2) of this instrument.
- (3) The Secretary must give a copy of the written verification to the person who would be the relevant person for an assessment of the prescribed fish or fish products if an assessment of the fish or fish products were carried out under Part 2 of Chapter 9 of the Act.