

ARRANGEMENT BETWEEN THE COMMONWEALTH AND THE NORTHERN TERRITORY IN RELATION TO THE DEMERSAL AND TIMOR REEF FISHERY

An ARRANGEMENT entered into between the Commonwealth of Australia (the Commonwealth) of the one part and the Northern Territory (the Territory) of the other part.

WHEREAS-

- (a) paragraph 4(1)(a) of the *Acts Interpretation Act 1901* of the Commonwealth provides that where an Act is enacted on or after the date of commencement of this section that is not to come into operation immediately upon its enactment, is expressed to confer power, *inter alia*, to make an instrument of a legislative or administrative character, then, unless the contrary intention appears, the power may be exercised, and anything may be done for the purpose of enabling the exercise of the power, before the Act concerned comes into operation as if it had come into operation;
- (b) subsection 2(2) of the *Fisheries Management Act 1991* of the Commonwealth (the Management Act) provides that Part 5 of the Management Act, which provides for co-operation with the States and Northern Territory in the management of fisheries, commences upon the repeal or the ceasing to have effect (as the case may be) of Part IVA of the *Fisheries Act 1952* of the Commonwealth;
- (c) by subsection 7(3) of the *Fisheries Legislation (Consequential Provisions) Act 1991* of the Commonwealth (the Consequential Provisions Act) as amended by section 24 of the *Primary Industries and Energy Legislation Amendment Act 1993* Part IVA of the *Fisheries Act 1952*, unless sooner repealed, ceases to have effect at the end of the period of 3 years beginning 3 February 1992, the day on which section 7 of the Consequential Provisions Act commenced;
- (d) paragraph 7(4)(a) of the Consequential Provisions Act provides that upon the commencement of Part 5 of the Act, the Northern Territory Fisheries Joint Authority, established by subsection 12D(1) of the *Fisheries Act 1952*, continues in existence as if it had been established under Part 5 of the Management Act;
- (e) an Arrangement was entered into under section 12H(4) between the Commonwealth and the Territory in relation to the Demersal Fishery except with the use of trawl nets and demersal longlines, published in the Commonwealth of Australia Gazette No. S109 on 14 April 1988;
- (f) paragraph 7(4)(b) of the Consequential Provisions Act provides that upon the commencement of Part 5 of the Act, any arrangement made with a State or Territory under subsection 12H(1) or (4) of the *Fisheries Act 1952* that was in force immediately before that commencement continues in force as if it had been made under Part 5 of the Management Act;

- (g) the Arrangement referred to in paragraph (e) of this Arrangement was made under Division 3 of Part IVA of the *Fisheries Act 1952*;
- (h) subsection 75(1) of the Management Act provides that an Arrangement under Division 3 of Part 5 of the Management Act may be terminated by instrument approved by the Governor-General and the Governor or Governors of the State or States concerned;
- (i) section 59 of the Management Act provides:
 - (i) that Part 5 of the Management Act has effect as if the Northern Territory was a State;
 - (ii) that a reference in that Part to the Governor of a State shall be read, in relation to the Northern Territory, as a reference to the Administrator of the Territory;
- (j) subsection 33(3) of the *Acts Interpretation Act 1901* provides, *inter alia*, that where an Act confers a power to make any instrument, the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal any such instrument;
- (k) subsection 8(1) of the *Interpretation Act 1978* of the Territory provides that where a provision of an Act is expressed to confer power, or to amend a provision of another Act in such a manner that the other Act, as amended, will confer power, to take any action, including power to make an appointment or to make an instrument of a legislative or administrative character then, before the first-mentioned provision or the second-mentioned provision as amended, as the case may be, comes into operation, that power may be exercised and anything may be done for the purposes of enabling the exercise of that power or of bringing the appointment or instrument into effect;
- (l) subsection 64(2) of the *Fisheries Act 1988* of the Territory (the Territory Act) empowers the Territory to terminate an arrangement under Part 5 of the Management Act;
- (m) subsection 71(1) of the Management Act provides that the Commonwealth may make an arrangement with a State or States represented on a Joint Authority that the Joint Authority is to have the management of a particular fishery in waters relevant to that State or any of those States;
- (n) subsection 74(1) of the Management Act provides that an arrangement under, *inter alia*, section 71 is to be made by an instrument approved by the Governor-General and the Governor or Governors of the State or States concerned;
- (o) subsection 64(1) of the Territory Act as amended by section 37 of the *Fisheries Amendment Act 1994* of the Territory empowers the Territory to make an arrangement under Part 5 of the Management Act;

- (p) both the Commonwealth and the Territory are desirous of exercising their powers to make a further Arrangement in relation to the fishery referred to in clause 2 of this Arrangement.

NOW THEREFORE, in pursuance of the Management Act and the Territory Act and of all other powers so enabling, it is mutually arranged as follows:

1. The Arrangement entered into between the Commonwealth and the Territory as referred to in paragraph (e) of the recitals to this Arrangement is, pursuant to subsection 75(1) of the Management Act and subsection 64(2) of the Territory Act, terminated.
2. The Commonwealth and the Territory hereby arrange that the fishery, being for any purpose other than recreation, in waters relevant to the Territory, being coastal waters and waters of the Australian fishing zone that lie within the area described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* under the heading "Area that includes the Adjacent Area in respect of the Northern Territory", on the seaward side of a line measured 15 nm from low water mark for:

- (a) all fish of the Class Osteichthyes (bony fishes) using any fishing method, excluding tuna and tuna-like fish of the following species-

- (i) *Thunnus albacares* (Yellowfin tuna)
Thunnus maccoyii (Southern bluefin tuna)
Thunnus obesus (Bigeye tuna)
Thunnus tonggol (Longtail tuna)
Thunnus alalunga (Albacore tuna)
Thunnus thynnus (Northern bluefin tuna)
Katsuwonus pelamis (Skipjack tuna);

- (ii) fish of the families Istiophoridae and Xiphiidae (billfish);

- (iii) fish taken as bait (dead or alive) by a person for his or her own use in the exercise of a fishing concession granted by the Australian Fisheries Management Authority under the Management Act to take tuna and tuna like fish of those species;

but excluding fish to which this paragraph otherwise would apply taken in the exercise of a right in relation to another fishery conferred by a fishing concession granted by the Australian Fisheries Management Authority under the Management Act;

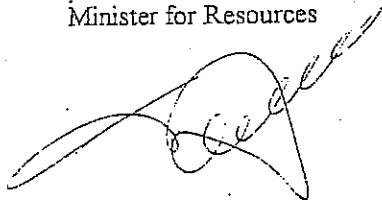
- (b) all fish of the Class Chondrichthyes (cartilaginous fishes) taken in the exercise of a right conferred by a licence or other authority granted by the Territory on behalf of the Northern Territory Fisheries Joint Authority for the fish to which paragraph (a) applies;

is to be managed by the Northern Territory Fisheries Joint Authority in accordance with the law of Northern Territory.

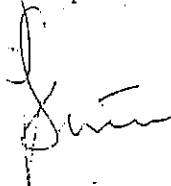
3. The Minister responsible for administering the Management Act and the Minister responsible for administering the Territory Act may agree in writing to the maximum quantity of other fish the subject of paragraph 2(b) that may be taken from time to time under a licence or other authority referred to in that paragraph and on matters of mutual interest in relation to the fishery.
4. This Arrangement shall, upon being executed on behalf of the Commonwealth and of the Territory and upon being approved by the Governor-General of the Commonwealth and the Administrator of the Northern Territory, take effect on 3 February 1995.
5. Without affecting the construction which this Arrangement would have if no provision of this Arrangement or part thereof is invalid, it is the intention of this Arrangement that if any provision of this Arrangement or part thereof is invalid, the remainder of that provision and of this Arrangement shall be construed as if that provision or part thereof was not included in this Arrangement even if the result is to extend the fishery described by this Arrangement.

Dated the 19th day of December 1994

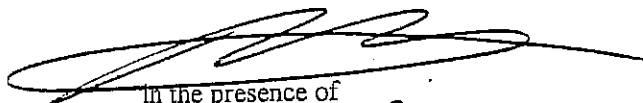
Signed for and on behalf of the
Commonwealth of Australia by the
Honourable DAVID PETER BEDDALL,
Minister for Resources



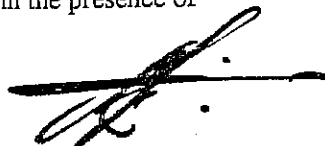
in the presence of



Signed for and on behalf of the
Northern Territory by the
Honourable MICHAEL JAMES
PALMER, Minister for Primary
Industry and Fisheries



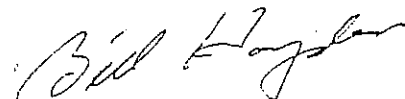
in the presence of




330 Government departments

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, in pursuance of subsections 74(1) and 75(1) of the *Fisheries Management Act 1991*, hereby approve this instrument.

Dated 27-1-1995
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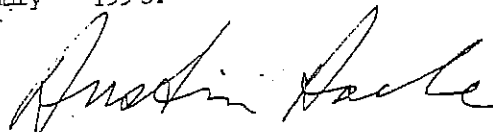

Governor-General

By His Excellency's command

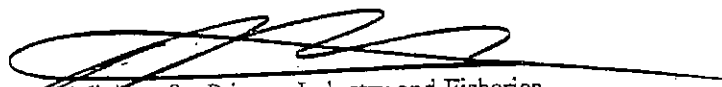

Minister for Resources

I, KEITH JOHN AUSTIN ASCHE, the Administrator of the Northern Territory of Australia, acting by and with the advice of the Executive Council in pursuance of the provisions of the *Fisheries Act 1988*, hereby approve this instrument.

Given under my hand this 12 day of January 1995.


Administrator

By His Honour's command


Minister for Primary Industry and Fisheries.