

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

FISHERIES MANAGEMENT BILL 1991

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be Moved
on Behalf of the Government

(Circulated by authority of the Minister for Primary Industries
and Energy, the Hon Simon Crean MP)



FISHERIES MANAGEMENT BILL 1991**GENERAL OUTLINE**

These amendments are designed to achieve a number of outcomes. They extend the scope of fisheries management objectives by requiring adherence to the principles of ecologically sustainable development, and also cover recreational fishing where deemed appropriate.

The power to make temporary orders which could over-ride the provisions of a plan of management or conditions on fishing concessions is also provided. This is designed to deal with emergency situations.

The amendments also contain a number of other changes designed to rectify anomalies or deficiencies in the original Bill.

FINANCIAL IMPACT STATEMENT

These amendments will have no direct financial impact.

NOTES ON CLAUSES

Clause 2A - Objectives

1. Sub-clause (1) restates the objectives of AFMA as provided in clause 6 of the Fisheries Administration Bill 1990. Paragraph (b) has been expanded to ensure that fisheries are managed in accordance with the principles of ecologically sustainable development and in particular that consideration is given to the impact of fishing on non-target species and on the marine environment.
2. The provisions in sub-clause (2) were previously contained in clause 11. This sub-clause restates Australian obligations under the United Nations Law of the Sea Convention to ensure the conservation and optimum utilisation of the living resources of the Australian Fishing Zone.

Clause 3 - Interpretation

3. The definitions of 'commercial fishing' and 'private fishing' have been omitted from sub-clause (1) as it was felt that the definitions as used were circular and not really needed. New definitions of 'dealing', modifications and 'temporary orders' have been included, while the definitions of 'fish' and 'fishery' have been amended. Marine mammals and marine reptiles have been specifically excluded from the definition of 'fish'.
4. Sub-clause (4) has been omitted as the definition of 'fishery' is now included in sub-clause (1). New sub-clause (4A) makes it clear that a fishery or managed fishery may be identified either by reference to an area or to some other characteristic.

Clause 6 - Application

5. Paragraph (b) of sub-clause (3) has been amended to specify that the Bill extends to foreign fishing for sedentary organisms on any part of the continental shelf that extends beyond the Australian Fishing Zone.

Clause 6A - Application of Act to areas outside the AFZ

6. With the expansion of fishing capacity throughout the world and the realisation of the finite nature of all fish resources the need for management in areas outside the fishing zones of any one nation is becoming increasingly recognised. In order for the international

management of such resources to be effective each nation must have adequate powers with respect to its own nationals operating in such fisheries.

7. For example to play its part in the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) Australia must be able to effectively regulate the operations of Australians in waters covered by the Commission. Controlling the operation of Australians in such fisheries through the application of regulations under the Bill would be ineffective because of the small penalties available through such a process. For this reason it is considered essential to have the power to be able to make regulations applying the whole or parts of the Bill to such a fishery.

Clause 8 - Operation of certain State and Territory Laws

8. This clause has been re-drafted to remove some of the complexities in the original wording. Sub-clause (3) now allows recreational fishing to be regulated through the provisions of a plan of management.

PART 2 - FISHING AND THE MARINE ENVIRONMENT

9. The title of this part has been changed from CONSERVATION OF THE MARINE ENVIRONMENT to better reflect the content.

Clause 11

10. This clause is to be omitted. The provisions previously included in this clause have now been embodied in clause 2A.

Clause 12 - Driftnet fishing

11. Under sub-clause (1A) it now becomes an offence for an Australian citizen or an Australian boat to be involved in driftnet fishing anywhere in the world.
12. Sub-clause (2) has been amended to allow a maximum length of less than 2.5 kilometres to be prescribed for surface set, floating gillnets (driftnets).

Clause 13 - Regulation etc. of certain practices

13. Paragraph (c) of sub-clause (2) has been amended to allow regulations with respect to by-catches to specify how by-catches are to be handled once taken.

Clause 14 - Prohibition against certain fishing

14. As marine mammals and marine reptiles will no longer be covered by this Bill reference to marine animals, turtles, marine mammals and crocodiles has been omitted from this clause.

Clause 15 - AFMA to pursue objectives

15. Sub-clause (1) has been re-drafted because the AFMA objectives are now in this Bill (clause 2A) and reference to clause 6 of the Fisheries Administration Bill is no longer required.

Clause 16 - Plans of management

16. As plans of management may cover both commercial and recreational fishing the word commercial has been omitted from sub-clause (1) allowing AFMA to consult with all persons engaged in fishing. Amendments to sub-clauses (2) and (3) require that public comment must be obtained after a draft plan of management has been prepared.
17. A new paragraph (c) has been added to sub-clause (5) requiring plans of management to include performance criteria against which their success can be measured. New paragraphs (6)(f) to (i) have been added. These allow a plan of management to; specify the circumstances in which a statutory fishing right may be used with respect to a foreign fishing boat; or prohibit or regulate recreational fishing; or impose obligations on holders of fishing concessions; or regulate fishing for research purposes.

Clause 19 - Amendment or revocation of plan of management

18. Amendments to sub-clauses (3) and (6) and the omission of sub-clause (4) mean that the steps to be followed in amending a plan of management must also be followed before a plan can be revoked.

Clause 20 - Nature of a statutory fishing right

19. The amendment to sub-clause (2) will allow a statutory fishing right to authorise fishing from a foreign fishing boat but only where this is specifically provided for in a plan of management.

Clause 21 - AFMA to establish system of statutory fishing rights

20. Sub-clause (3) has been amended to specify that the holder of a statutory fishing right must comply with any obligation imposed by a plan of management. It had been previously intended to achieve this through conditions attaching to the statutory fishing right.

Clause 31 - Grant of fishing permits

21. New paragraph (aa) to sub-clause (5) requires the holder of a fishing permit granted in accordance with a plan of management to comply with any obligations imposed by that plan.

Clause 33 - Grant of foreign fishing licences

22. Paragraph (aa) to sub-clause (4) requires the holder of a foreign fishing licence granted in accordance with the provisions of a plan of management to comply with any obligations imposed by that plan.
23. Amendments to this clause also remove reference to 'commercial' fishing thus giving the potential to use fishing permits for recreational fishing where provision for this is made in a plan of management.

Clause 39 - Grant of foreign master fishing licences

24. Paragraph (aa) to sub-clause (3) requires the holder of a foreign master fishing licence operating in a fishery subject to a plan of management to comply with any obligations imposed by that plan.

Clause 41A - Temporary orders

25. This is a new provision designed to deal with emergency situations or to correct errors or anomalies in plans of management. Because of the time taken to introduce or amend a plan of management and because it may on occasions be necessary to take action contrary to the provisions of such a plan the provision of some over-riding emergency power was considered essential.

26. It is, however, intended that this power would be used only when genuinely required, other measures, such as changing the conditions on fishing concessions, amending plans of management or making regulations would be used where appropriate and if time permits.

27. While temporary orders will be disallowable instruments it has been decided to limit the time for which they can remain in effect to 3 months. An order may be re-made only once.

28. These provisions allow sufficient time for more permanent measures to be implemented if necessary, for example by introducing or amending a plan of management.

Clause 44 - Creation of interests in fishing rights

29. A 'dealing' as referred to in sub-clause (1) has been expanded to include the transferring, transmitting or extinguishing of an interest in a statutory fishing right.

Clause 48 - Suspension, cancellation etc. of fishing right to be noted in Register

30. Sub-clause (1) has been amended to exclude from matters to be recorded on the Register any restriction on a statutory fishing right resulting from the making of a temporary order.

31. New sub-clauses (3) and (4) require AFMA to notify the holder of a registered interest in a statutory fishing right of any notation made on the Register in accordance with this clause with respect to that right.

Clause 63 - Delegation

32. Sub-clause (1) has been amended to specify that a Joint Authority may only delegate its power to AFMA or to an officer or employee of the Commonwealth or a Commonwealth authority or to an officer or employee of a State or a State authority.

Clause 76 - Functions of Joint Authorities under this Act

33. In sub-clause (3) paragraph (b) has been amended so as to mirror the objectives of AFMA as now stated in clause (2A). Paragraph (b) contains the ecologically sustainable development objectives now proposed.

Clause 78 - Application of provisions relating to offences

34. A new paragraph (ab) has been added to specify that a reference to a temporary order in any prosecution under this Bill includes a temporary order made by a Joint Authority.

Clause 82 - Powers of officers

35. In sub-clause (1) the reference to 'commercial' fishing has been omitted from paragraph (a). As recreational fishing may also be regulated through a plan of management the powers of officers should not be restricted to 'commercial' fishing.
36. Paragraph (b) has been amended to allow compliance with the provisions of a temporary order to be included in those matters that may be investigated by an officer boarding a boat.

Clause 89 - Grant of fish receiver permits

37. In sub-clause (4) paragraphs (b), (c) and (d) have each been amended to remove the incorrect reference to fishing permits.

Clause 93 - Offences

38. In sub-clause (1) paragraphs (d), (e) and (f) have each been amended to include reference to offences related to non-compliance with a provision of a temporary order.

Clause 97 - Using foreign boat for recreational fishing.

39. The title to this clause and paragraphs (a) and (b) have all been amended by replacing 'private' fishing with the more appropriate 'recreational' fishing.

Clause 161 - Delegation by Minister

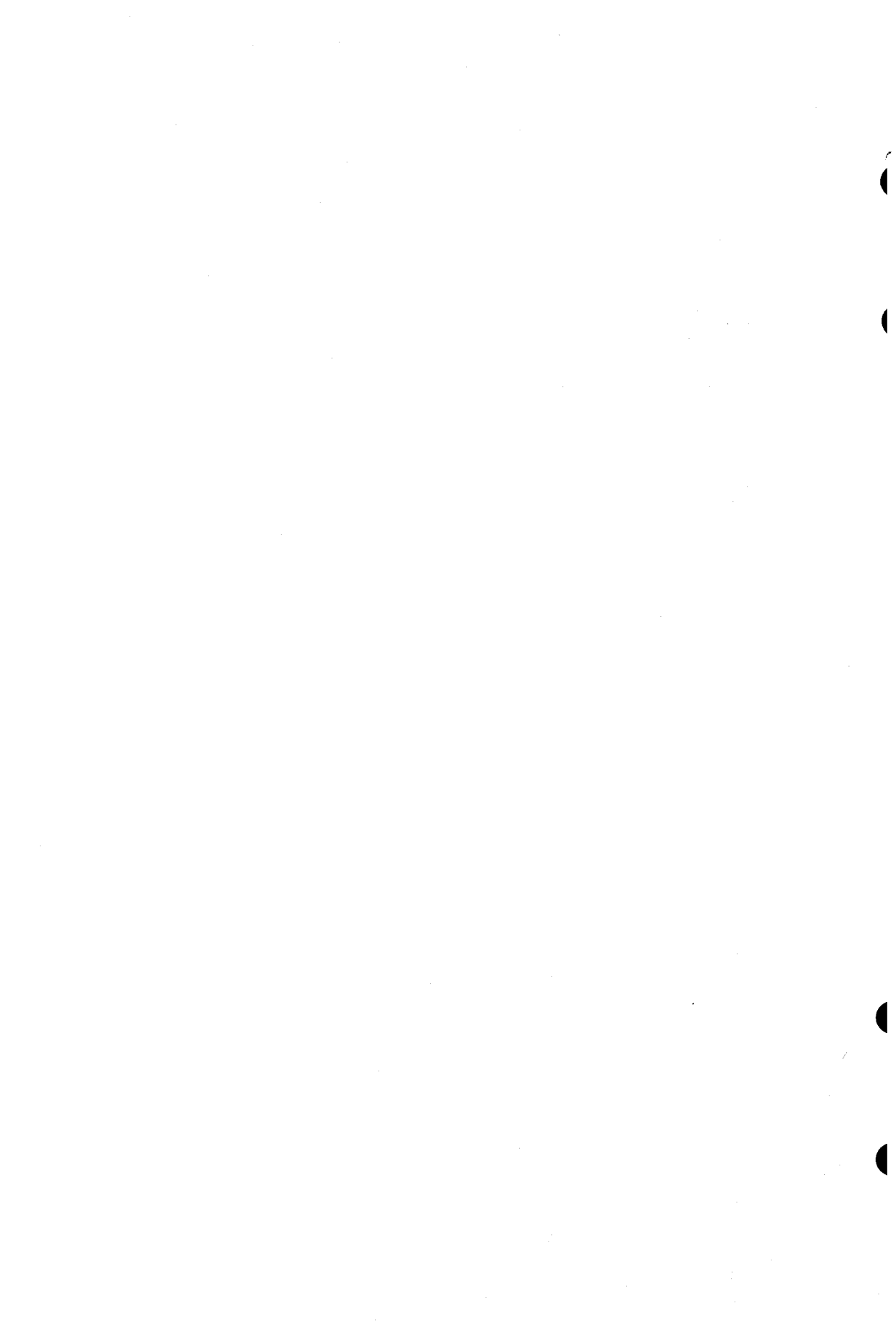
40. This clause has been amended to prevent the Minister from delegating his or her powers with respect to the approval of plans of management under clauses 17 and 19.

Clause 164 - Evidence

41. A new paragraph (k) has been added to sub-clause (2) allowing AFMA to give a certificate evidencing matters contained in a temporary order.

Clause 166 - Regulations

42. Paragraph (e) of sub-clause (2) has been amended to include the provision of copies of draft plans of management in those matters for which regulations relative to the recovery of costs can be made.
43. Paragraph (i) of sub-clause (2) has been omitted. Provisions now in clause 6A allowing regulations to be made extending this Bill or parts of this Bill to Australians fishing in designated areas outside the AFZ make this paragraph unnecessary.

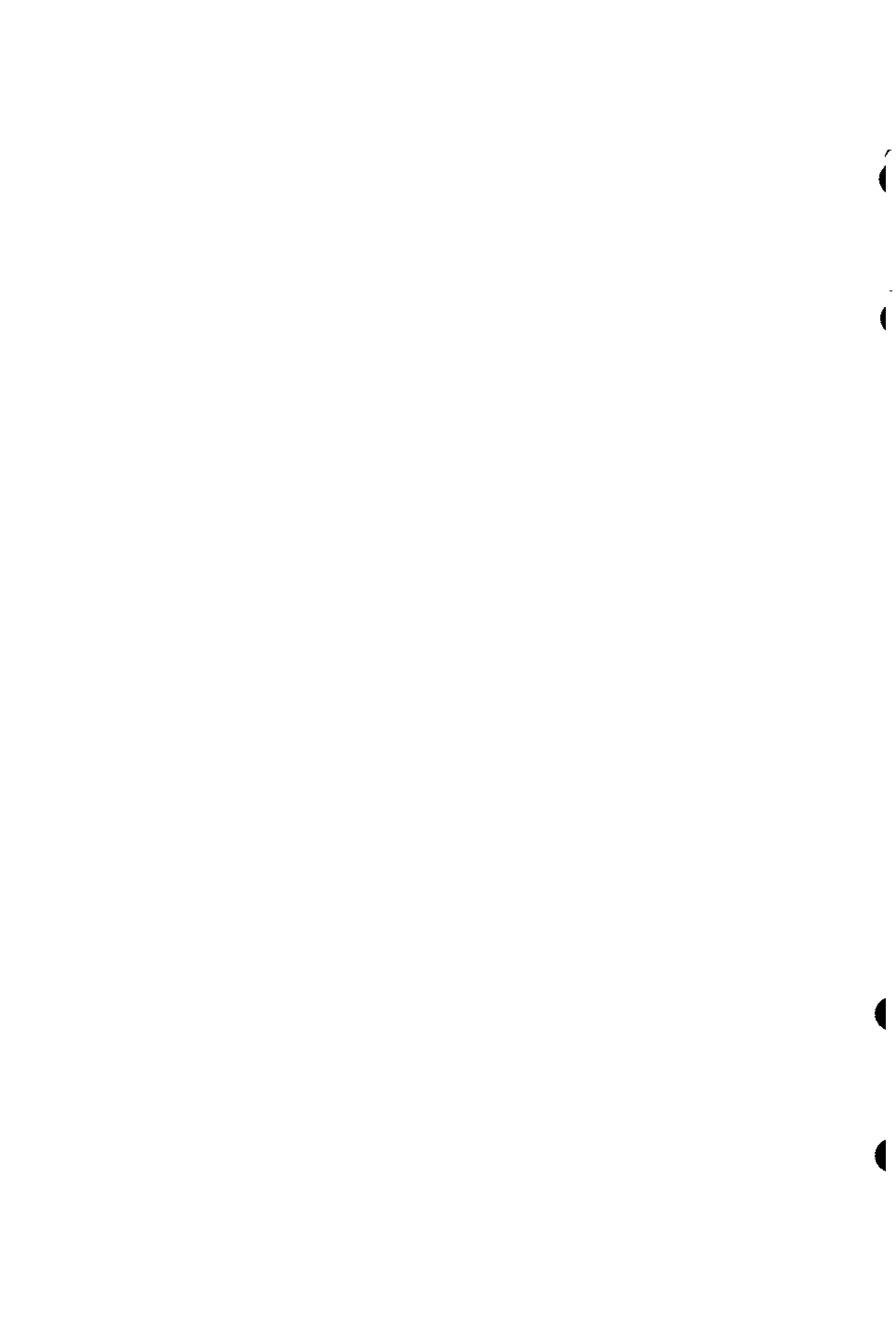


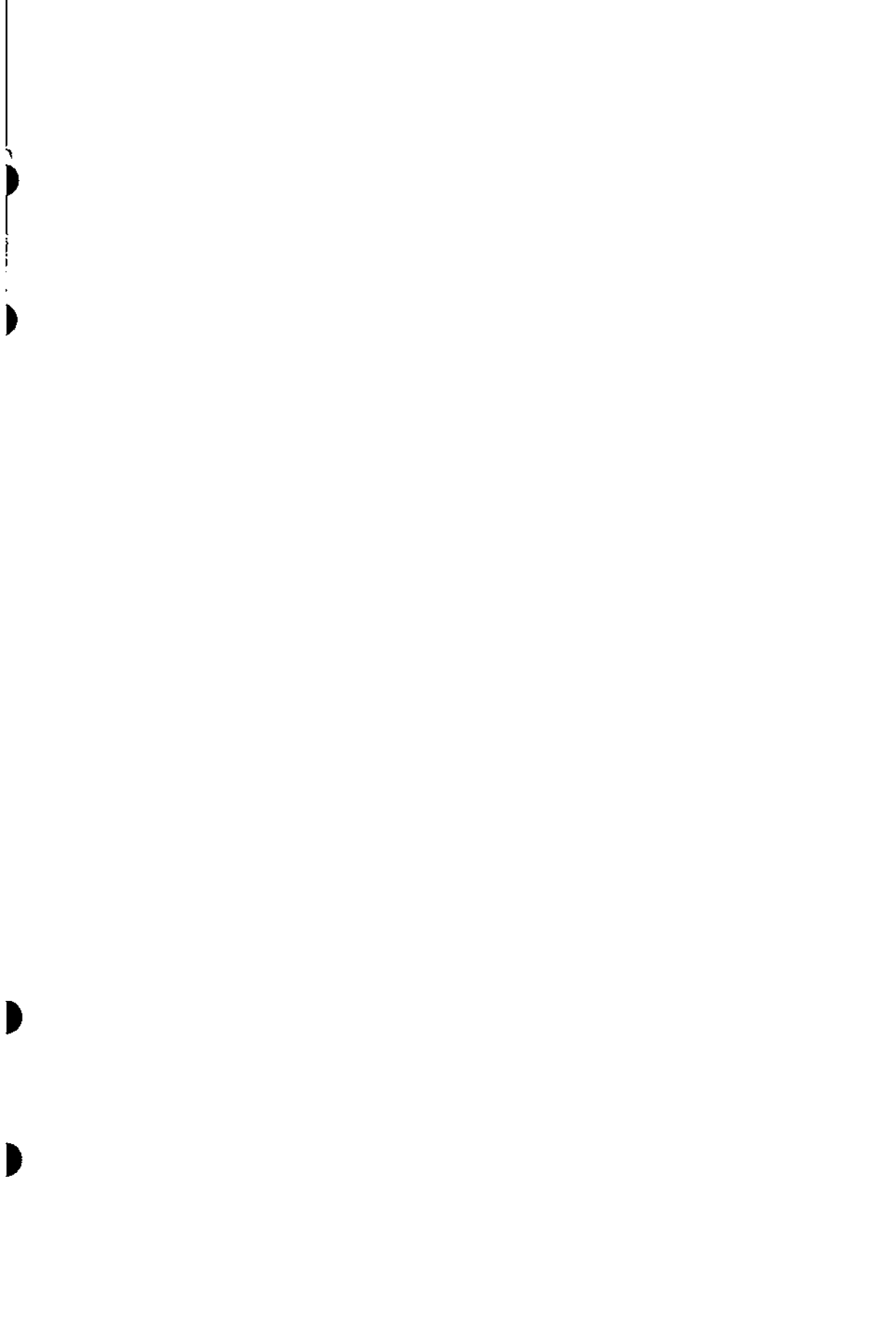
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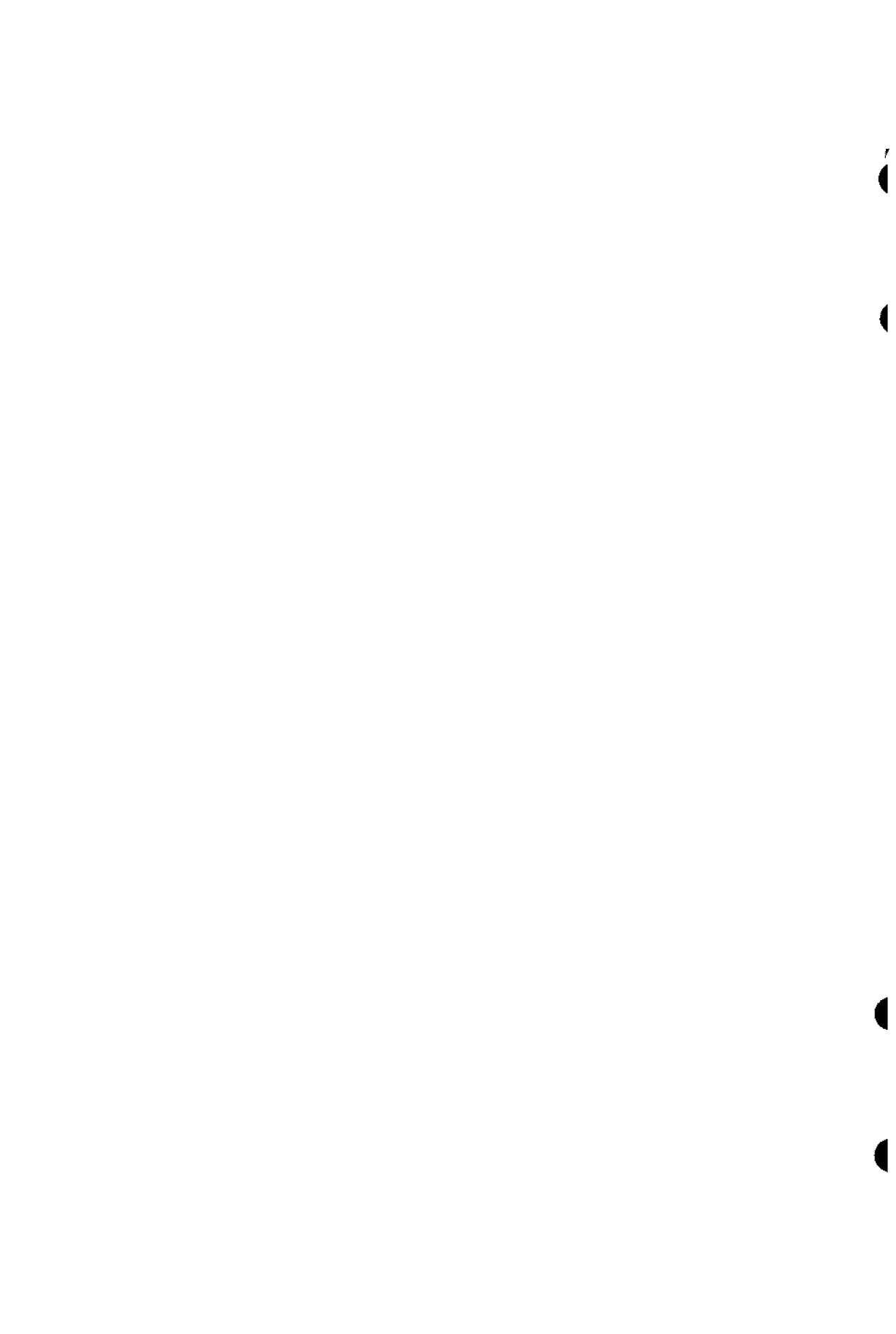
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