

FISHERIES.

4° and 5° GEO. VI., No. XXXV.

No. 35 of 1940.

AN ACT to amend the Fisheries Act, 1905-1938.

[Assented to 20th December, 1940.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Fisheries Act Amendment Act*, 1940, and shall be read as one with the Fisheries Act, 1905-1938 (as reprinted in the Appendix to the Sessional Volume of Statutes for the year 1928 and amended by the Act No. 27 of 1938), hereinafter referred to as the principal Act. Short title.

2. Section five of the principal Act is amended by inserting in subsection (1) a new paragraph, as follows:— Amendment of s. 5 of the principal Act.

The Governor may appoint any person to be the deputy of the Chief Inspector of Fisheries and in that capacity to exercise and discharge all or any of the powers and functions of the Chief Inspector of Fisheries, whether that officer be absent from or

present in the State. Such appointment shall not affect the exercise or discharge by the Chief Inspector of Fisheries himself of any power or function.

Amendment
of s. 6 of the
principal Act.

3. Section six of the principal Act is amended by adding a paragraph as follows:—

(p) regulating and controlling the operations of registered trout acclimatisation societies.

Insertion of
new section
after s. 7.

4. A new section is inserted after section seven of the principal Act, as follows:—

Inspector may
requisition
boats, etc.

7A. (1) Any inspector may require any person in charge of any boat to permit such inspector to use such boat, and any engine or oars or paddles and rowlocks therein, for the purpose of carrying out his duties under or enforcing the provisions of this Act.

(2) Any person refusing to permit an inspector to use such boat, or failing to facilitate the use of such boat by an inspector, shall be guilty of an offence under this Act.

Penalty: Not less than two pounds and not exceeding ten pounds.

(3) The Chief Inspector of Fisheries shall pay to the person deprived of the use of any boat, by reason of the use thereof by an inspector, such sum as he considers reasonable. Provided that the amount so paid shall not exceed ten shillings per hour during the time the boat is used, together with an amount equal to the cost of repairing the damage (if any) caused to the boat during the time it is used.

Amendment
of s. 10A of
the principal
Act.

5. Section ten A of the principal Act is amended by adding a new subsection, as follows:—

(2) Any person guilty of an offence under this section shall be liable to a penalty of not less than five pounds and not exceeding twenty pounds for a first offence, and of not less than ten pounds and not exceeding fifty pounds for a second and subsequent offence.

6. Section eleven of the principal Act is amended by deleting subsection (3) and inserting in lieu thereof a subsection as follows:—

Amendment
of s. 11 of
the principal
Act.

(3) There shall be payable for every such license issued in respect of a boat not exceeding twenty-four feet in length, the fee of one pound and for every such license issued in respect of a boat exceeding twenty-four feet in length, the fee of two pounds. Provided that, if any such license be issued after the thirtieth day of June in any year, the fee payable shall be one-half of the fee herein prescribed.

7. Section thirteen of the principal Act is amended by deleting therefrom the word "seine," wheresoever it appears in the said section.

Amendment
of s. 13 of
the principal
Act.

8. Section sixteen of the principal Act is amended by deleting therefrom the whole of subsection (1) and inserting in lieu thereof a new subsection, as follows:—

Amendment
of s. 16 of
the principal
Act.

(1) All persons licensed under the provisions of sections twelve and thirty of this Act, and all persons selling or exposing for sale fish at any fish market, shall furnish in writing to the Chief Inspector of Fisheries or his nominee a monthly statement of all fish caught or consigned to or received by them, as the case may be, and shall state the quantity of each species of fish and the waters in which they were captured.

Any person failing to furnish or furnishing any false or inaccurate information in any such statement shall be liable to a penalty not exceeding two pounds.

9. Section nineteen of the principal Act is amended by deleting from subsection (1) the words "five pounds, and, for a subsequent offence, to a penalty of twenty pounds," in lines six and seven, and inserting in lieu thereof the words "not less than five pounds and not exceeding twenty pounds for a first offence and not less than ten pounds and not exceeding fifty pounds for a second or subsequent offence."

Amendment
of s. 19 of the
principal Act.

10. Section twenty-two of the principal Act is amended—

Amendment
of s. 22 of the
principal Act.

(a) by deleting from subsection (1) the words "not exceeding two pounds for the first offence and

for any subsequent offence to a penalty of five pounds," in lines six, seven, and eight of the said subsection, and inserting in lieu thereof the words "not less than two pounds and not exceeding five pounds for a first offence and not less than five pounds and not exceeding twenty pounds for a second or subsequent offence";

(b) by deleting from subsection (3) the words and figures "any fish known as or called the 'crayfish' of a weight less than twelve ounces or than such greater or lesser weight as may be from time to time prescribed by proclamation, or of any female of such fish of whatsoever size" in lines three, four, five, six, and seven, and inserting in lieu thereof the words "any female of the fish known as or called the 'crayfish'."

New Part inserted in principal Act.

11. A new Part is inserted in the principal Act after Part III., to stand as Part IIIA, as follows:—

PART IIIA.—TROUT ACCLIMATISATION DISTRICTS AND SOCIETIES.

Acclimatisation districts.

26B. (1) The Governor may from time to time by proclamation published in the *Government Gazette* declare that any specified area within the boundaries of which trout fry or young or mature trout have been or are being liberated or placed shall be an acclimatisation district for the purposes of this Act.

(2) Any such proclamation shall define the boundaries of the area concerned, and such definition may be by reference to roads or natural features, or otherwise.

(3) The Governor may from time to time by a further proclamation similarly published revoke or amend any such proclamation.

(4) When any such proclamation includes an area of State forest, access to and the use of streams within such area for the purpose of fishing, or other activities of any society registered under the provisions of this Act, shall be subject to such conditions

as the Minister for Forests on the recommendation of the Conservator of Forests may consider necessary for the protection of the State forest.

Nothing contained in this Act shall authorise entry on any portion of a State forest or timber reserve which is the subject of planting or regeneration and on which trespass is prohibited under the provisions of the Forests Act, 1918-1931.

26C. (1) Any society consisting of not less than ten members (hereinafter referred to as a trout acclimatisation society), the objects of which as set out in its rules are wholly or mainly the hatching, rearing, distribution, or protection of trout may, subject to any regulations made under this Act, apply to the Governor for registration by depositing with the Chief Inspector of Fisheries a copy of its rules, signed by the president or chairman of the society and countersigned by three members thereof, together with a statement showing the number of members of the society and indicating the area in respect of which the society desires to be registered.

Registration
of trout ac-
climatisation
societies.

(2) If the Governor is satisfied that the rules deposited are not repugnant to this Act or to any regulation made thereunder, and that the society is qualified to apply for registration under this section, he may by writing under his hand grant the application for registration either without amendment or with such amendments of the area indicated therein as to him seem fit.

(3) As soon as is practicable after the granting of registration, a notification of the registration shall, together with the name or description of the area in respect of which the registration was granted, be published in the *Government Gazette*, and the date of such publication shall be deemed to be the date of registration.

(4) No amendments of the rules of any registered trout acclimatisation society shall have any force or effect, unless application for the registration of the amendments has been made and granted in like manner.

(5) Upon registration under this section, a trout acclimatisation society shall become a body corporate by the name or title stated in its rules, with perpetual succession and a common seal, and in its corporate name may hold and dispose of real and personal property, and may sue and be sued, and may recover any money owing to the body corporate, whether by a member thereof or not.

(6) Not more than one trout acclimatisation society shall be registered in respect of the same area.

(7) The Governor may at any time, upon application by any trout acclimatisation society, by notification in the *Government Gazette*, increase, reduce, or alter in any way the area in respect of which such society is registered, and may in like manner, notwithstanding that such application may not have been made, reduce or alter the area in respect of which any trout acclimatisation society is registered, after having given at least one month's notice to such society. Every such notification shall define the area so increased, reduced, or altered in pursuance of this subsection, and the area as so increased, reduced, or altered shall be deemed to be the area in respect of which the society is registered.

Vesting of property in trout in acclimatisation societies.

26D. For the purposes of this Act the property in all trout in or upon the area in respect of which any trout acclimatisation society is registered shall be deemed to be vested in such society.

Acclimatisation society may purchase land.

26E. A registered trout acclimatisation society may, with the approval of the Minister and upon such conditions as the Minister may impose, expend any of its funds in the purchase of land within the area in respect of which it has been registered for camping grounds for anglers, and in the erection thereon, or on any lands, the control and management of which are vested in the society, of necessary buildings for the accommodation of anglers, and in otherwise providing for their convenience.

26F. Every registered trout acclimatisation society shall, on or before the thirty-first day of January in each year, furnish to the Chief Inspector of Fisheries a full statement of its operations during the year ended on the thirty-first day of December next preceding, and a full statement of its accounts, showing in detail the several receipts and items of expenditure of the society during such period. Such statement shall be accompanied by a duly audited balance sheet, and the Chief Inspector of Fisheries shall publish such report and statement in his annual report.

Statement of operations and accounts to be made by acclimatisation societies.

26G. (1) If any registered trout acclimatisation society fails to comply with the requirements of this Act, or contravenes or fails to comply with any regulation relating to the conduct of the affairs of registered societies, the Governor may by notification in the *Government Gazette* cancel the registration of such society.

Cancellation of registration of acclimatisation societies in certain circumstances.

(2) (a) If it appears from a report of an inspector or other officer that any registered trout acclimatisation society is not taking proper steps to carry out within the area in respect of which it is registered such of its objects as stated in its rules relate to the hatching, rearing, distribution or protection of trout, the Minister may by notice served by post upon the person nominated pursuant to the rules to be served with notices to the society, requiring the society to show cause why its registration should not be cancelled.

(b) If after consideration of the representations (if any) made by the society the Minister is satisfied that the society has for a period of three months or upwards failed to take proper steps to carry out such objects, he may recommend the Governor to cancel the registration, and the Governor may cancel the same accordingly, by notification in the *Government Gazette*.

(3) Where the registration of a trout acclimatisation society is cancelled under this section—

(a) the property in any trout which by or under this Act is vested in the society shall be divested from the society and shall vest in His Majesty;

- (b) the property in any land purchased by the society, and any buildings or other improvements erected thereon, shall be divested from the society and shall vest in the Minister;
- (c) any moneys held by the society at the date upon which its registration is so cancelled, shall be paid to and may be recovered by the Minister;
- (d) the society shall cease to have the control and management of any lands, the control and management of which were at the date on which its registration was cancelled vested in the society;
- (e) the Governor may authorise the Minister to exercise within the area all the powers, authorities, and functions previously exercised by the society within the area aforesaid.

Amendment
of s. 27 of the
principal Act.

12. Section twenty-seven of the principal Act is amended by adding thereto a subsection, as follows:—

(3) If any land reserved under the provisions of subsection (2) of this section be within an area in respect of which any trout acclimatisation society is registered, the Governor may in like manner direct that such reserve shall vest in and be held by such trout acclimatisation society in trust for such purposes and subject to such conditions as may be specified.

Amendment
of s. 32 of the
principal Act.

13. Section thirty-two of the principal Act is amended by inserting after the word "time" in line two the words "stop and search any vehicle or."

Amendment
of s. 33 of the
principal Act.

14. Section thirty-three of the principal Act is amended by inserting after the word "taking" in the first line the word "or."

Amendment
of s. 35 of the
principal Act.

15. Section thirty-five of the principal Act is amended by deleting the words "not exceeding ten pounds" from line five and inserting in lieu thereof the words "of not less than ten pounds and not exceeding fifty pounds."

16. New sections are inserted in the principal Act after section thirty-five, as follows:— New section.

35A. Any person who, on being charged before a justice with having fish in his possession which may reasonably be suspected of being taken in contravention of this Act, does not give an account to the satisfaction of such justice how he came to be in possession of the same, shall be liable to a penalty of not less than five pounds and not exceeding twenty pounds. Person charged with possession of fish liable to penalty.

35B. (1) Any person who is found on any waters in a boat containing any net or other implement whatsoever, the use of which in such waters is prohibited by any proclamation made under sections eight or nine of this Act, shall be guilty of an offence, and shall be liable to a penalty of not more than five pounds for a first offence and to a penalty of not less than five pounds and not exceeding twenty pounds for a second or subsequent offence. Person found on waters with prohibited net or implement liable to penalty.

(2) It shall be a sufficient defence to a prosecution for an offence against subsection (1) of this section if the person charged proves—

- (a) that a license in or to the effect of the prescribed form to take the net or other implement through the waters mentioned in the charge to other waters had been issued by an inspector; and
- (b) that at the time of the commission of the alleged offence such net or implement was on such waters solely for the purpose of being so taken.

17. Section thirty-seven of the principal Act is repealed and a new section is inserted in lieu thereof, as follows:— Amendment of s. 37 of the principal Act.

37. (1) All engines, lines, nets, and other articles, but not including any boat, used by or in the possession of any person, and all fish taken, sold, offered, consigned or exposed for sale by or in the possession of any person, contrary to the provisions of this Act, shall be forfeited to the use of His Majesty. Repeal and new section.
Engines, nets, etc. of offenders may be forfeited.

(2) Where the commission of any offence against this Act involves a forfeiture of any articles, the conviction of any person for such offence shall have effect as a condemnation of such articles, without the necessity of any complaint being laid for such condemnation.

Amendment
of s. 37A of
the principal
Act.
Repeal and
new section.

18. Section thirty-seven A of the principal Act is repealed and a new section is inserted in lieu thereof, as follows:—

Inspector
may seize
boats, nets,
lines, etc., in
certain cir-
cumstances.

37A. (1) When any boat, net, line, engine, implement, appliance or other article for taking fish shall be found by any inspector in any closed waters without any person in actual possession thereof, or on a boat in closed waters, or on the foreshore abutting on such closed waters, the inspector may seize such boat, net, line, engine, implement, appliance, or other article, and such inspector, or another inspector, shall give the prescribed notice of finding thereof, and shall thereafter cause the thing so found to be taken before a justice, who shall, if satisfied that there are reasonable grounds for believing that the thing in question had been or was intended to be used in contravention of this Act, or of any regulation or proclamation made thereunder, condemn the same as forfeited to His Majesty, and the same shall be forfeited accordingly.

(2) "Closed waters" means any waters as to which any proclamation under sections eight or nine or by-laws relating to any of the purposes of such sections made by a road board is or are in force; and where any boat, net, line, implement, appliance, or other article for taking fish is found in waters to which such by-laws apply, "inspector" includes the secretary, officers, and members of the road board.

(3) Any person making a claim to ownership of any boat, net, line, engine, implement, appliance, or other article so seized may appear before the justice before whom the thing has been taken and make such representations as he may think fit.

19. A new section is inserted in the principal Act after section thirty-seven A, as follows:— New sections.

37B. The Chief Inspector of Fisheries may, subject to the approval of the Minister, and in the manner prescribed by regulation, sell or dispose of all boats, nets, lines, engines, implements, appliances, and other articles, and all fish forfeited in accordance with the provisions of this Act. Chief Inspector may sell boats, nets, lines, etc.

20. The principal Act as amended by this Act may be cited as the Fisheries Act, 1905-1940. Citation of principal Act as amended