

WESTERN AUSTRALIA

FISHERIES ACT 1905

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WESTERN AUSTRALIA

FISHERIES ACT 1905

AN ACT for the regulation of the fishing industry and fish farming, and for the conservation and management of fisheries and aquatic animal and plant life, and for purposes connected therewith.

[*Long title substituted by No. 72 of 1974 s. 3.*]

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Fisheries Act 1905*¹.

[*Section 1 amended by No. 72 of 1974 s. 4.*]

Repeal

2. [*Section 2 omitted under Reprints Act 1984 s. 7 (4) (f).*]

Interpretation

3. (1) In this Act, unless the context or subject matter otherwise indicates or requires,—

“Aquatic organism” means and includes all aquatic animals and aquatic plants and any part of those animals or plants, and the sources of reproduction of them;

- “Boat” includes every vessel, boat, barge, floating platform or punt of any description whatsoever;
- “Boat licence” means a licence issued under this Act to use a boat for fishing;
- “Commonwealth Act” means the *Fisheries Act 1952* of the Parliament of the Commonwealth as amended from time to time;
- “Director” means the person holding or acting in the office of Director of Fisheries;
- “Fish” means and includes all or any of the varieties of marine or fresh water fishes, molluscs and crustacea or marine animal life;
- “Fisherman” means any person licensed under this Act to catch fish or acting under the control or direction of a person so licensed;
- “Fixed engine” includes any hedge, weir, stake-net, bag-net, long line or bultow, and any fixed implement or engine for catching or facilitating the catching of fish;
- “Foreign boat” has the same meaning as it has in the Commonwealth Act;
- “High water mark” when applied to tidal waters means the ordinary high water mark at spring tides, and when applied to other waters means the ordinary high water mark at winter level;
- “Inspector” includes the Director of Fisheries and every inspector of fisheries appointed under this Act other than an honorary inspector, but also includes an honorary inspector to the extent to which he is authorized under this Act to carry out the duties of an inspector of fisheries;
- “Long line or bultow” means any line intended or used for the purpose of catching fish, to which more than 6 fishing hooks are attached;
- “Minister” means the responsible Minister of the Crown charged for the time being with the administration of this Act;
- “Police officer” includes any constable or officer of police;
- “Prescribed” means prescribed by this Act or any regulations thereunder;
- “Proclamation” means a proclamation by the Governor published in the *Government Gazette*;
- “Regulations” means the regulations made under the authority of this Act;
- “Rock lobster pot” means any net, pot, trap or other appliance of whatever nature, intended or used for the taking of rock lobsters;

“Rock lobster tail” means the whole or part of the abdomen of a rock lobster at any time after that abdomen or part of the abdomen has been severed from the carapace;

“the Department” means the Government Department known as the Fisheries Department²;

“the Rock Lobster Committee” means the Rock Lobster Industry Advisory Committee constituted under section 5B;

“Vehicle” includes any vehicle included in that term within the meaning of the *Road Traffic Act 1974*, and includes also any railway locomotive and any railway carriage or wagon.

(2) A reference in any regulation, proclamation, notice, order, licence, or any other instrument made or issued by or under this Act to “crayfish” shall, unless the contrary intention appears, be read as a reference to “rock lobster” or “rock lobsters”, as the case requires.

(3) Where, in a provision of this Act, there is a reference to Western Australian waters or to waters generally, the reference—

- (a) is a reference to all waters that are within the limits of the State;
- (b) except for purposes in relation to a fishery that is to be managed in accordance with the law of the Commonwealth pursuant to an arrangement under Part IIA and except for purposes prescribed by paragraph (d)—is a reference to any waters of the sea not within the limits of the State that are on the landward side of waters adjacent to the State that, within the meaning of that Part, are Commonwealth proclaimed waters;
- (c) for purposes in relation to a fishery that is to be managed in accordance with the law of the State pursuant to an arrangement under Part IIA—is a reference to any waters to which the legislative powers of the State extend, with respect to that fishery, whether pursuant to section 5 of the *Coastal Waters (State Powers) Act 1980* of the Parliament of the Commonwealth or otherwise; and
- (d) for purposes in relation to activities to which this Act applies, being activities that are, within the meaning of the Commonwealth Act, carried on for private purposes otherwise than by the use of a foreign boat—is a reference to any waters to which the legislative powers of the State extend with respect to those activities.

[Section 3 amended by No. 46 of 1960 s. 2; No. 20 of 1961 s. 2; No. 50 of 1965 s. 3; No. 38 of 1966 s. 3; No. 4 of 1969 s. 2; No. 61 of 1969 ss. 2 and 7; No. 72 of 1974 s. 5; No. 60 of 1979 s. 3; No. 73 of 1981 s. 3; No. 70 of 1982 s. 3; No. 57 of 1985 s. 3.]

Power to exempt from Act

4. The Governor may from time to time, by proclamation, exempt any portion of Western Australia from the operation of this Act, or any of the provisions thereof, and may in like manner revoke such proclamation.

PART II—ADMINISTRATION

Minister a body corporate

4A. (1) The Minister shall for the purposes of this Act be a body corporate under the name of the "Minister for Fisheries" with perpetual succession and a common seal; and by that name shall be capable of suing and being sued and of acquiring holding, exchanging, leasing and disposing of real and personal property, and of doing and suffering all that bodies corporate may do and suffer.

(2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Minister affixed to a document and shall presume that it was duly affixed.

(3) On and after the coming into operation of this subsection the body corporate formerly constituted under this Act by the name of the "Minister for Fisheries and Fauna" is preserved and continues in existence as a body corporate under and subject to the provisions of this Act by the name of the "Minister for Fisheries", but so that the corporate identity of the body corporate and its rights, powers, functions, duties and liabilities are not affected, and any reference to that former name shall, unless the context is such that it would be incorrect or inappropriate so to do, be read and construed as a reference to the "Minister for Fisheries".

[Section 4A inserted by No. 67 of 1965 s. 2; amended by No. 30 of 1975 s. 2.]

Appointment of inspectors and other officers

5. (1) There shall be an office, entitled Director of Fisheries, to which shall be appointed under the *Public Service Act 1978*³, a person who has obtained the degree of Bachelor of Science, or a degree in biological sciences deemed by the Governor to be equivalent thereto.

(1a) The officer who at the time of the commencement of the *Fisheries Act Amendment Act 1974*¹, is in office as Director of Fisheries shall be deemed to have been appointed to that office under this section.

[(1b) repealed.]

(1c) There shall be appointed under the *Public Service Act 1978*³, such inspectors of fisheries, licensing officers and other staff as are necessary for the effective administration of this Act.

(1d) The Minister may appoint persons to be honorary inspectors of fisheries or honorary licensing officers to carry out such of the duties of an inspector of fisheries or licensing officer, respectively, as the Minister determines in relation to any specified part of the State.

(1e) The Minister may, with the approval of the Public Service Board, engage persons to carry out such of the duties of an inspector of fisheries or licensing officer as the Minister determines in relation to any specified part of the State, but the engagement of any such person does not of itself render the provisions of the *Public Service Act 1978*³, or the *Superannuation Act 1871*, or the *Superannuation and Family Benefits Act 1938*, applicable to that person or affect the application of those provisions to him if they applied to him at the time of that engagement.

(1f) The Minister may, with the approval of the Public Service Board, engage under contract for services any consultant or professional, technical or other assistance, and may authorize a person so engaged to carry out such of the duties of an inspector of fisheries as the Minister determines.

(1g) The Director shall issue to each person appointed or engaged pursuant to this section to carry out duties under this Act a certificate of appointment in the prescribed form specifying the parts of the State in which that person is authorized to carry out those duties and the general nature of the duties, and the holder shall produce such certificate whenever required so to do by any person in respect of whom he has exercised or is about to exercise any of his powers under this Act.

(1h) Production of a certificate in the prescribed form is conclusive proof in any court of the appointment of the person to whom that certificate relates and of his authority to exercise the powers conferred upon him by this Act in the execution of the duties therein specified.

(2) It shall be the duty of every police officer to aid and assist inspectors in enforcing compliance with the provisions of this Act.

(3) All police officers shall *ex officio* and within their respective districts be, and have the powers and authorities of, inspectors of fisheries.

[Section 5 amended by No. 35 of 1940 s. 2; No. 50 of 1965 s. 4; No. 72 of 1974 s. 6; No. 70 of 1982 s. 4.]

Delegation by Director generally

5A. (1) The Director, with the prior approval of the Minister, may, by writing signed by the Director, delegate to a person any of the powers, functions or duties of the Director under this Act, other than this power of delegation.

(2) For the purposes of this Act, the exercise of a power or the performance of a function or duty by a delegate under this section shall be deemed to be the exercise of the power or the performance of the function or duty by the Director.

(3) Where, under this Act, the exercise of a power or the performance of a function or duty by the Director is dependent upon the opinion, belief or state of mind of the Director in relation to a matter and that power, function or duty has been delegated under this section, that power, function or duty may be exercised or performed by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.

(4) A delegation under this section may be made to a specified person or to persons of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices.

(5) A delegation under this section may—

- (a) be made so as to apply generally or as otherwise provided by the instrument of delegation;
- (b) be made subject to such conditions, qualifications and exceptions as are set out in the instrument of delegation;
- (c) be revoked or varied by instrument in writing signed by the Director.

(6) The Director may exercise a power or perform a function or duty notwithstanding that he has delegated its exercise or performance under this section.

[Section 5A inserted by No. 70 of 1982 s. 5.]

Rock Lobster Industry Advisory Committee

5B. (1) There shall be a Committee, to be known as the Rock Lobster Industry Advisory Committee, which shall consist of either 8 members or 9 members appointed by the Minister, and of those members—

- (a) 2 shall be officers of the Department and one of those officers shall be appointed by the Minister to be the Chairman of the Committee;
- (b) 2 shall be members of the body known as the Rock Lobster and Prawning Association of Australia, Incorporated, nominated by that body; and
- (c) 4 shall be fishermen, who for commercial purposes are actually engaged in the taking of rock lobsters,

and where the Committee consists of 9 members one shall be a person appointed to represent persons who are not commercially engaged in fishing or the fishing industry.

(2) The Rock Lobster Committee shall—

- (a) inquire into and report to the Minister upon any matter referred to it by the Minister or by the Director in relation to the rock lobster fisheries in Western Australian waters or any waters adjacent thereto; and
- (b) advise the Minister on questions relating to the management, control, protection, regulation and development of those rock lobster fisheries, and may make such recommendations as it thinks fit in relation thereto.

[Section 5B substituted by No. 50 of 1965 s. 6; amended by No. 4 of 1969 s. 3; No. 61 of 1969 ss. 3 and 7; No. 72 of 1974 s. 8; No. 70 of 1982 s. 6.]

[5C. Section 5C repealed by No. 57 of 1985 s. 4.]

Provisions relating to Committee

5D. (1) The provisions of this section have effect in relation to the Rock Lobster Committee.

(1a) Where any member of the Committee ceases to hold any qualification required for his becoming a member, his office shall become vacant and shall be filled in accordance with subsection (2).

(1b) Subject to subsections (1a) and (2), the term of tenure of office of a member of the Committee shall be such period not exceeding 3 years as is specified in the instrument of his appointment but he shall be eligible for re-appointment on the expiration of his term of office.

(2) On the occurrence of any vacancy in an office of member of the Committee, a person eligible to be appointed to that office under the provisions of this Act shall, in accordance with those provisions; be appointed by the Minister to fill the vacancy, and a person so appointed holds office, subject to those provisions, for the remainder of the term of office of the person in whose place he is appointed.

(3) The Committee shall meet at such times and places as it may decide, or as determined by the Chairman, and may regulate its own procedure, and the performance or exercise of the functions, powers or duties of the Committee is not affected by reason only of there being a vacancy in the office of a member.

(4) Where a member of the Committee, other than the Chairman, is unable to attend meetings of the Committee, whether on account of illness or otherwise, the Minister may appoint a person to be an acting member during the inability of that member, and the person so appointed shall have all the powers and functions of a member, but the appointment of a person as an acting member may be terminated at any time by the Minister.

(4a) The Minister may, from time to time, in relation to the Committee—

- (a) appoint an officer of the Department, not being a member of the Committee, to act as a member and Chairman of any meeting of the Committee at which the Chairman is not present, and any officer so appointed has, at such a meeting, all the powers and functions of a member and the Chairman, and while so acting shall be a member for the purposes of section 5E (3); and
- (b) revoke any appointment made under paragraph (a).

(5) At a meeting of the Committee—

- (a) the Chairman shall preside;

[(b) deleted.]

- (c) 4 members form a quorum;

- (d) a question arising at the meeting shall be determined by a majority of the votes of the members present; and if the numbers are equally divided on any question, such question shall be deemed to be resolved in the negative.

[Section 5D substituted by No. 50 of 1965 s. 8; amended by No. 4 of 1969 s. 5; No. 61 of 1969 s. 7; No. 72 of 1974 s. 10; No. 70 of 1982 s. 7; No. 57 of 1985 s. 5.]

Remuneration and protection of members

5E. (1) The members of the Rock Lobster Committee, other than those who are officers in the Public Service of the State, may be paid and may receive such fees and allowances in respect of their services as such members, as the Minister determines from time to time.

(2) A member of the Committee may resign his office of member by writing under his hand addressed to the Minister.

(3) A person who is or has been a member or acting member of the Committee is not personally liable for anything done or omitted in good faith in, or in connection with, the exercise or purported exercise of any power conferred, or the carrying out of any duty imposed, by this Act on the Committee.

[Section 5E substituted by No. 50 of 1965 s. 9; amended by No. 72 of 1974 s. 11; No. 57 of 1985 s. 6.]

Committee not agent of the Crown

5F. The Rock Lobster Committee is not, except in relation to any matter in which the Committee is specially authorized by the Minister to act on behalf of the Crown, the agent or servant or the representative of the Crown.

[Section 5F substituted by No. 50 of 1965 s. 10; amended by No. 72 of 1974 s. 12; No. 57 of 1985 s. 7.]

Appointment of Secretary to Committee

5G. For the purposes of enabling the Rock Lobster Committee to carry out its functions, powers and duties under this Act, the Minister may, with the concurrence of the Public Service Board, appoint from time to time an officer of the Public Service of the State to be the Secretary of the Committee.

[Section 5G substituted by No. 57 of 1985 s. 8.]

Regulations

6. (1) The Governor may, from time to time, make, alter, and repeal regulations for the purposes of this Act mentioned, and also, in so far as express provision has not been made by this Act, and more particularly for—

- (a) defining the duties of inspectors and other persons upon whom any duty or authority is imposed or conferred by this Act or the regulations, defining the fisheries or parts of the State to which those duties relate and the extent of the authority conferred, prescribing an official uniform and badge of office that may be issued to or worn by specified classes of such persons, and providing for the examination of inspectors and other persons for the purposes of promotion to specified positions in the Department.
- (b) prescribing the limits in or about the mouth of or within any river, creek, stream, estuary, or other inlet of the sea within which it shall not be lawful for any person to fish by means of any net or fixed engine;
- (c) determining the times and seasons at which the taking of any species of fish or of any marine algal life shall commence and cease, or be permitted or prohibited;
- (d) prescribing the mode of testing the length of nets, and the dimensions of the meshes of the nets, and providing for the disposal of forfeited nets;
- (e) providing for the sale or other disposal, including the cutting loose or destruction, of any underweight rock lobster tails or undersize fish seized or forfeited under this Act, and of nets or other implements for taking fish found in any waters without an owner, or rock lobster pots or floats attached thereto found in any waters unattended and not marked as prescribed, or not provided with a device or gap as required by this Act;
- (f) providing for the hauling or landing of fishing nets in such a manner as to prevent, as far as practicable, the destruction of underweight or undersize fish;
- (g) the general regulation of net and line fishing and the taking of molluscs and crustacea as well in regard to modes, places, and times of usage as in all other respects;

- (ga) prescribing in addition to those specified in this Act, persons and things required to be licensed and the circumstances in which they are required to be licensed;
- (gaa) prescribing the duties and obligations of holders of licences, or licences of a particular kind, under this Act;
- (gb) requiring any applicant for a permit under section 35C (3) to advertise the making of the application;
- (h) prescribing licences required under and for the purposes of the provisions of this Act and the regulations, the maximum fees payable for any licence, enabling the differentiation of fees payable in respect of any particular kind of licence, having regard to the conditions of the licences concerned, and prescribing the forms and, subject to the provisions of section 17, conditions of all licences, the persons by whom such licences may be issued, the forms of application for an endorsement of licences and the mode of payment of licence fees;
- (i) prescribing fees for general and exclusive licences to gather or collect from any portion of Western Australian waters any product of the sea exclusive of food fish;
- (j) preventing the destruction of fish, and for preventing injury to fishing grounds by deposit of filth, refuse, or other deleterious matters, or by discharges from mining works, saw mills, gas works, or other manufactories, or boiling-down or wool-washing establishments, and for prohibiting such matters from being deposited in tidal or inland waters, or into any watercourse, whether dry or not, leading into the same;
- (ja) prohibiting or regulating the use, release or dispersal of any prescribed sprays, effluents or discharges deemed likely to affect fish or aquatic plant or animal life, in accordance with the provisions of section 26A;
- (jb) requiring the quarantining, treatment, destruction or disposal of any thing, animate or inanimate, which in the opinion of the Minister may harbour any disease injurious to aquatic life, whether indigenous or introduced, and whether at liberty, farmed or otherwise held in captivity or confinement;
- (jc) prohibiting or regulating the introduction into the State or the transportation or keeping within the State of any live fish or aquatic organism or the young, offspring, source of reproduction, eggs or other viable material relating to any such fish or aquatic organism;
- (jd) regulating the keeping, breeding or farming of rock lobster, prawns, marron and other fish in captivity or confinement, and the sale or other disposal of such fish;
- (je) prohibiting or regulating the possession of, or dealing in, prescribed food fish for purposes other than human consumption;

- (k) the carrying of lights by licensed boats engaged in fishing;
- (l) compelling fishermen to mark their boats and prescribing the manner in which they shall be marked;
- (m) appointing places for landing fish, and prohibiting the landing of fish except at an appointed landing place;
- (ma) prohibiting or regulating the bringing of fish or portions of fish into Western Australian waters or on to land;
- (mb) prohibiting or regulating the storage, cutting up, treatment, handling, preserving, dealing with and disposal of fish or portions of fish;
- (mc) the protection of fish spawn and undersize fish;
- (md) delegating powers and discretions under any regulation to the Minister;
- (me) regulating the movements and use of boats in relation to the taking, storage, cutting up, handling, treatment, preserving, dealing with or disposal of fish;
- (mf) facilitating proof of any matter in a prosecution for an offence under a regulation;
- (mg) prescribing the form and type of label to be used by a person delivering or consigning fish, and the manner in which the label shall be attached to any receptacle containing fish;
- (mh) regulating the manner in which and the means whereby fish shall be delivered, consigned and transported;
- (mi) prescribing the minimum weight of rock lobster tails which any person may lawfully sell, give, consign, or have in his possession under this Act;
- (mj) prescribing the forms of returns required to be furnished under this Act, the particulars and information which those returns shall contain, and the times when, the periods in respect of which, and the persons to whom returns are to be furnished;
- (mk) requiring the production by persons who operate or cause to be operated processing establishments of any books, documents and other papers for the purposes of Part IIIB, and determining the times when, the place where, the persons to whom, and the manner in which any such production shall be made;
- (ml) providing for the protection of prescribed species throughout the year, or in any close season, in prescribed parts of the State;
- (mm) prohibiting or regulating entry to, and the taking of fish or other animal or plant life in, aquatic reserves, and providing for the conservation and management of the environment relating thereto including the prohibition or control of any act or thing

considered by the Governor to be likely to have a deleterious effect on any such reserve or to be prejudicial to the purposes for which the reserve was created;

- (mn) providing for the licensing and control of the operations of boats engaged in fishing operations, whether on charter or otherwise, where any part of the fish taken is disposed of for gain or reward;
- (mo) prescribing bag limits or the number or weight of any species of fish or other aquatic plant or animal life which any person may take in any specified period or from any specified part of the State, or have in his possession for any specified purpose;
- (n) any other matter or thing which shall in any manner relate to fisheries or to marine algal life;
- (na) providing for the protection under patent rights of any discovery or invention the outcome of Departmental research;
- (nb) providing for the care of any fish or other thing seized in accordance with the provisions of this Act and the disposal or sale of that fish or other thing, and for the holding of any proceeds from the sale until dealt with according to law;
- (o) giving effect to the provisions of this Act as to all details whatsoever.

(2) The regulations may impose a penalty not exceeding \$1 000 for a breach of any regulation made under this section and, in the case of a continuing breach, not exceeding \$20 for each day that the breach is continued, and may provide for the forfeiting, in addition to any penalty, of nets, rock lobster pots, lines, implements, or appliances used and fish brought into Western Australian waters, taken, consigned or in the possession of any person, in breach of those regulations.

[Section 6 amended by No. 27 of 1938 s. 2; No. 35 of 1940 s. 3; No. 48 of 1949 s. 3; No. 55 of 1951 s. 5; No. 46 of 1960 s. 3; No. 20 of 1961 s. 3; No. 63 of 1962 s. 2; No. 50 of 1965 s. 12; No. 67 of 1965 s. 3; No. 113 of 1965 s. 8; No. 38 of 1966 s. 4; No. 4 of 1969 s. 6; No. 61 of 1969 s. 7; No. 72 of 1974 s. 13; No. 30 of 1975 s. 3; No. 60 of 1979 s. 4; No. 70 of 1982 s. 8.]

Right of entry

7. Every inspector shall have the right of entry on all lands whatsoever for the purpose of giving effect to or carrying out any of the provisions of this Act or the regulations.

Inspector may requisition boats, etc.

8. (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.

(3) The Director 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.

[Section 8⁴ amended by No. 50 of 1965 s. 13; No. 113 of 1965 s. 8; No. 60 of 1979 s. 16.]

PART IIA—COMMONWEALTH-STATE MANAGEMENT OF FISHERIES

[Part IIA inserted by No. 73 of 1981 s. 4.]

Interpretation

8A. (1) In this Part, unless the context or subject matter otherwise indicates or requires—

“arrangement” means an arrangement made by the State with the Commonwealth under this Part of this Act, whether or not it is also made with another State or other States;

“coastal waters” in relation to the State has the same meaning as it has in the Commonwealth Act;

“Commonwealth Minister” means the Minister for the time being administering the Commonwealth Act and any other Minister exercising powers and performing functions pursuant to section 12C of the Commonwealth Act;

“Commonwealth proclaimed waters” means waters that by virtue of a proclamation under the Commonwealth Act are proclaimed waters within the meaning of that Act;

“fishery” means a class of activities by way of taking fish, being a class of such activities that is identified in an arrangement under this Part as a fishery to which the arrangement applies;

“Joint Authority” means—

(a) the Western Australian Fisheries Joint Authority established under section 12D (1) of the Commonwealth Act; and

(b) any other Joint Authority established under section 12D (6) of that Act of which the Minister is a member;

“Joint Authority fishery” means a fishery in respect of which there is in force an arrangement under this Part of this Act under which the fishery is to be under the management of a Joint Authority.

(2) Without limiting the matters by reference to which a fishery may be identified in an arrangement under this Part, those matters include all or any of the following—

(a) a species of fish;

(b) a description of fish by reference to sex or any other characteristic;

- (c) an area of waters or of seabed;
- (d) a method of fishing;
- (e) a kind or class of vessels;
- (f) a class of persons;
- (g) a purpose of activities.

[Section 8A: See note under Part heading.]

Powers and functions of Minister

8B. (1) The Minister may exercise any power and perform any function conferred on the Minister by Part IVA of the Commonwealth Act, including any power or function of the Minister as a member of a Joint Authority.

(2) Where, in the exercise of the power conferred on him by Part IVA of the Commonwealth Act, the Minister appoints a deputy, the deputy may exercise the powers and perform the functions conferred by that Act on the deputy of a member of a Joint Authority other than the Commonwealth Minister.

[Section 8B: See note under Part heading.]

Judicial notice

8C. All courts and persons acting judicially shall take judicial notice of the signature of a person who is or has been a member of a Joint Authority or a deputy of a member of a Joint Authority and of the fact that he is, or was at a particular time, such a member or deputy.

[Section 8C: See note under Part heading.]

Functions of Joint Authority

8D. A Joint Authority has such functions in relation to a fishery in respect of which an arrangement is in force under this Part as are conferred on it by the law in accordance with which, pursuant to the arrangement, the fishery is to be managed.

[Section 8D: See note under Part heading.]

Delegation

8E. (1) A Joint Authority may, by instrument in writing, either generally or as otherwise provided by the instrument, delegate to a person any of its powers under this Act other than this power of delegation.

(2) Where a power delegated under subsection (1) is exercised by the delegate, the power shall, for the purposes of this Act, be deemed to have been exercised by the Joint Authority.

(3) A delegation under this section may be expressed as a delegation to the person from time to time holding, or performing the duties of, a specified office, including an office—

- (a) in the service of;
- (b) in the service of an authority of; or
- (c) under the law of,

the Commonwealth, another State or a Territory of the Commonwealth.

(4) A delegate of a Joint Authority is, in the exercise of his delegated powers, subject to the directions of the Joint Authority.

(5) A delegation of a power under this section—

- (a) may be revoked, by instrument in writing, by the Joint Authority (whether or not constituted by the persons constituting the Joint Authority at the time the power was delegated);
- (b) does not prevent the exercise of the power by the Joint Authority; and
- (c) continues in force notwithstanding any change in the membership of the Joint Authority.

(6) Where, under this Act, the exercise of a power or the performance of a function by a Joint Authority is dependent upon the opinion, belief or state of mind of that Joint Authority in relation to a matter and that power or function has been delegated in pursuance of this section, that power or function may be exercised or performed by the delegate upon the opinion, belief or state of mind of the delegate in relation of that matter.

(7) A certificate signed by a member of a Joint Authority stating any matter with respect to a delegation under this section by the Joint Authority is evidence of that matter.

(8) A document purporting to be a certificate referred to in subsection (7) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

(9) Nothing in this Part is intended to prevent the delegation by a Joint Authority, in accordance with the law of the Commonwealth, of powers conferred on the Joint Authority by the law of the Commonwealth.

[*Section 8E: See note under Part heading.*]

Procedure of Joint Authorities

8F. (1) The provisions of subsections (1) to (8) (inclusive) of section 12F of the Commonwealth Act apply to and in relation to the performance by a Joint Authority of its functions under this Act.

(2) A written record of a decision of a Joint Authority, if signed by the Commonwealth Minister, or his deputy, who took part in or made the decision is evidence that the decision, as recorded, was duly made.

(3) In proceedings in any court, an instrument or other document signed on behalf of a Joint Authority by a member of the Joint Authority shall be deemed to have been duly executed by the Joint Authority and, unless the contrary is proved, shall be deemed to be in accordance with a decision of the Joint Authority.

[Section 8F: See note under Part heading.]

Report of Joint Authority

8G. The Minister shall cause a copy of a report of a Joint Authority prepared under section 12G of the Commonwealth Act to be laid before each House of Parliament as soon as practicable after preparation of the report.

[Section 8G: See note under Part heading.]

Arrangement for management of certain fisheries

8H. (1) The State may, in accordance with section 12J of the Commonwealth Act, make an arrangement referred to in section 12H of that Act for the management of a particular fishery.

(2) An arrangement may be terminated as provided by the Commonwealth Act.

(3) After an arrangement has been made but before the arrangement takes effect, licences, endorsements and other instruments may be granted, issued, renewed, made or executed, and regulations may be made, for the purposes of the operation of this Act as affected by the arrangement, as if the arrangement had taken effect, but such a licence, endorsement, instrument or regulation does not have effect before the arrangement takes effect.

(4) Upon the termination of an arrangement, licences, endorsements and other instruments granted, issued, renewed, made or executed, and regulations made, for the purposes of the operation of this Act as affected by the arrangement cease to have effect.

(5) After action for the purpose of the termination of an arrangement has been taken, but before the termination takes effect, licences, endorsements and other instruments may be granted, issued, renewed, made or executed, and regulations may be made, for the purposes of the operation of this Act as affected by the termination of the arrangement, as if the arrangement had been terminated, but such a licence, endorsement, instrument or regulation does not have effect before the termination of the arrangement takes effect.

[Section 8H: See note under Part heading.]

Application of this Act to fisheries in accordance with arrangements

8I. Subject to this section, where there is in force an arrangement that provides that a particular fishery is to be managed in accordance with the law of the State, the provisions of this Act apply to and in relation to the fishery except that those provisions do not apply to or in relation to that fishery in respect of foreign boats in Commonwealth proclaimed waters or operations on or from foreign boats, or persons on foreign boats, in Commonwealth proclaimed waters or in relation to matters that occurred in or in relation to Commonwealth proclaimed waters before the arrangement took effect.

[*Section 8I: See note under Part heading.*]

Functions of Joint Authority

8J. Where, in respect of a fishery, there is in force an arrangement under which a Joint Authority has the management of the fishery and the fishery is to be managed in accordance with the law of the State, the Joint Authority has the functions of keeping constantly under consideration the condition of the fishery, formulating policies and plans for the good management of the fishery and, for the purposes of the management of the fishery, exercising the powers conferred on it by this Act and co-operating and consulting with other authorities (including other Joint Authorities within the meaning of the Commonwealth Act) in matters of common concern.

[*Section 8J: See note under Part heading.*]

Joint Authority to exercise certain powers instead of Minister, etc.

8K. (1) Save as provided in this section, a licence or endorsement granted, issued, renewed or made under this Act otherwise than by virtue of this section does not authorize the doing of any act or thing in or in relation to a Joint Authority fishery.

(2) In respect of a Joint Authority fishery that is to be managed in accordance with the law of the State, the powers conferred on the Minister or any other person by or under this Act (this Part excepted) (including powers with respect to the issue, renewal, cancellation and suspension of licences) are exercisable by the Joint Authority instead of the Minister or such other person and are so exercisable as if references in the relevant provisions to the Minister, and to any other person authorized to exercise a power, were references to the Joint Authority.

(3) A licence granted under this Act by a Joint Authority shall contain such conditions and limitations that it applies only in relation to a Joint Authority fishery, or Joint Authority fisheries, managed by that Joint Authority.

(4) A Joint Authority may endorse a licence granted under this Act (including such a licence granted by that Joint Authority or another Joint Authority) so as to extend the operation of the licence to matters to which the licensing powers of the Joint Authority under this Act are applicable and, where such an endorsement is made—

- (a) the endorsement ceases to have effect if the licence ceases to have effect; and
- (b) the Joint Authority may suspend or cancel the endorsement as if it were a licence granted by the Joint Authority.

(5) Subject to section 8N (1) (b) and (c), where, at a time a fishery becomes a Joint Authority fishery, a regulation, notification or order under this Act would, but for this subsection, apply to the fishery, the regulation, notification or order, as the case may be, ceases so to apply.

(6) This section does not empower a Joint Authority to grant, or to take other action in respect of, a licence in respect of a foreign boat or to endorse such a licence.

[*Section 8K: See note under Part heading.*]

Application of certain provisions relating to offences

8L. The provisions of this Act relating to offences and enforcement and legal proceedings shall extend and apply in respect of anything done to or in relation to fish to which a Joint Authority fishery relates or otherwise in relation to a Joint Authority fishery and for that purpose shall be read and construed—

- (a) as if a reference in those provisions to a licence were a reference to a licence, or an endorsement of a licence, granted, issued, renewed or made by the relevant Joint Authority, in relation to the person alleged to have committed the offence or the boat alleged to have been used in the commission of the offence; and
- (b) as if a reference in those provisions to fish were a reference to fish to which the Joint Authority relates.

[*Section 8L: See note under Part heading.*]

Presumption relating to certain statements

8M. A statement in an arrangement to the effect that specified waters—

- (a) in the case of an arrangement to which the Commonwealth and the State are the only parties—are waters adjacent to the State; and

(b) in the case of any other arrangement—are waters adjacent to the States that are parties to the arrangement or are waters adjacent to a specified State or States, shall, for the purposes of this Act, be conclusively presumed to be correct.

[Section 8M: See note under Part heading.]

Regulations and notices

8N. (1) Where a Joint Authority is to manage a fishery in accordance with the law of the State, the Governor may, for the purpose of giving effect to a decision of the Joint Authority—

- (a) make regulations for the management of the fishery;
- (b) make a regulation applying to the fishery a regulation made otherwise than pursuant to this section; or
- (c) amend a regulation made otherwise than pursuant to this section so that it is expressed to apply to the fishery, whether or not it also applies to any other fishery.

(2) Where a Joint Authority is to manage a fishery in accordance with the law of the State, the Minister may, for the purpose of giving effect to a decision of the Joint Authority—

- (a) by notice published in the *Government Gazette* apply to the fishery a notice under this Act given otherwise than pursuant to this section; or
- (b) amend by notice published in the *Government Gazette* a notice under this Act given otherwise than pursuant to this section so that it is expressed to apply to the fishery, whether or not it also applies to any other fishery.

(3) The power conferred on the Governor to make regulations otherwise than under subsection (1) does not extend to the making of a regulation of a kind referred to in subsection (1) (a) or (b) or the amendment of a regulation in the manner referred to in subsection (1) (c).

(4) Where a regulation or notice affecting a fishery that is to be managed by a Joint Authority is expressed to be made or given pursuant to this section, it shall be conclusively presumed that it was made for the purpose of giving effect to a decision of the Joint Authority.

[Section 8N: See note under Part heading.]

PART III—FISHING

Gazettal of closed fisheries

9. (1) The Minister may, by notice published in the *Government Gazette*, prohibit all persons or any class of person specified in that notice from—

- (a) taking any specified species of fish by any specified means of capture;

- (b) taking any fish whatsoever by any specified means of capture;
- (c) taking any specified species of fish by any means of capture whatsoever;
- (d) taking any fish whatsoever by any means of capture whatsoever;
- (e) taking any marine algal life whatsoever,

in Western Australian waters or in any specified portion of those waters, during any specified term or until a further notice is so published.

[(2) and (3) repealed.]

[Section 9 substituted by No. 50 of 1965 s. 14; amended by No. 38 of 1966 s. 5; No. 72 of 1974 s. 14; No. 30 of 1975 s. 4; No. 60 of 1979 s. 5.]

Illegal devices, etc.

10. (1) The Minister may, by notice published in the *Government Gazette*,—

- (a) declare what length and depth of net and size of mesh, nature, ply rating, percentage or method of manufacture of the materials or of any material component, of the whole or any part of a fishing net shall be a lawful net when used or intended to be used in any specified water or waters, or for catching any specified kind or kinds of fish, and the lengths of hauling lines which it shall be lawful to attach to any such net;
- (b) restrict or prohibit the use for the purpose of catching fish of any nets, lines, threads or other gear used or intended to be used for fishing that are composed wholly or partly of synthetic fibres or of such other fibres as the Minister may specify in the notice;
- (c) specify the materials, and the size or quality of materials, and the dimensions, manner and method of construction of any device which shall be a lawful device;
- (d) specify any means to be a lawful means;
- (e) declare any device or means to be an unlawful device or unlawful means, either generally or in any specified case;
- (f) prohibit the carrying, use, possession, manufacture or import of any device or means not authorized under this Act;
- (g) limit the number or size of any lawful devices and the means by which they may be used by any person;
- (h) limit the maximum number of devices which may be used by or carried or placed or attached on or to any boat or vehicle, or any part thereof, at any one time, and make differing provisions for boats or vehicles or parts;

- (i) specify the class or classes of person who may use any specified means or device and the conditions under which they may be used;
- (j) specify the species of fish or other aquatic organisms or their products which may be taken only by a specified means or by a specified device used in a specified manner; and
- (k) specify the species of fish or aquatic organisms or their products which shall be thereby protected from being taken by any or all devices or means either—
 - (i) completely; or
 - (ii) except as may be authorized for scientific purposes pursuant to section 20.

(2) A notice under subsection (1) may be made so as to apply—

- (a) generally, or in a particular class of case or in particular classes of case;
- (b) at all times, or at a specified time or at specified times; and
- (c) throughout Western Australian waters or elsewhere in the State, or to any specified part or specified parts thereof,

and may make differing provisions as regards classes of persons and species of fish or other aquatic organisms or their products.

(3) Any notice of the Minister published in the *Government Gazette* pursuant to the provisions of section 10, section 19 or section 19A as those provisions existed immediately prior to the coming into operation of the *Fisheries Act Amendment Act 1974*¹, shall be deemed to have been continued in operation and to subsist until cancelled or varied by the Minister by a notice published in the *Government Gazette* pursuant to section 9 or section 10.

[Section 10 substituted by No. 72 of 1974 s. 15; amended by No. 30 of 1975 s. 5.]

Notices in Gazette may be cancelled or varied

11. Any proclamation made by the Governor under the provisions of section 9, section 10, or section 19 as those provisions existed immediately prior to the coming into operation of the *Fisheries Act Amendment Act 1965*¹, or made by the Governor under the provisions of section 12A as those provisions existed prior to the coming into operation of the *Fisheries Act Amendment Act 1969*¹, may be cancelled or varied at any time by the Minister by a notice published in the *Government Gazette*, and any such notice or any other notice of the Minister published in the *Government Gazette* under the provisions of this Act—

- (a) when so published takes effect according to its tenor on the day specified in the notice as that on which it takes effect, but if a day is not so specified, takes effect on the day of the publication;

- (b) may be cancelled or varied at any time by the Minister by a subsequent notice so published;
- (c) may be subject to any specified exception as regards species of fish or marine algal life, or means, place, time, or purpose of capture or otherwise;
- (d) may restrict the means of capture mentioned in such exception to implements and appliances supplied by or under the authority of the Minister.

[Section 11 substituted by No. 50 of 1965 s. 16; amended by No. 38 of 1966 s. 6; No. 72 of 1974 s. 16.]

Express prohibition of breaches of proclamations or notices

12. (1) Every person who—

- (a) contravenes by act or omission any proclamation made by the Governor under the provisions of section 9 or section 10, as those provisions existed immediately prior to the coming into operation of the *Fisheries Act Amendment Act 1965*¹;
- (aa) contravenes by act or omission any notice published in the *Government Gazette* by the Minister under the provisions of section 10, section 19 or section 19A, as those provisions existed immediately prior to the coming into operation of the *Fisheries Act Amendment Act 1974*²;
- (b) contravenes by act or omission any requirements of a notice of the Minister published in the *Government Gazette* under section 9 or section 10;
- (c) attempts to contravene any such proclamation or any requirement of any such notice;
- (d) is in possession of fish taken in contravention of any such proclamation or any requirement of any such notice, or of any means of capture whatsoever intended to be used in contravention of any such proclamation or any requirement of any such notice; or
- (e) sells or attempts to sell any fish taken in contravention of any such proclamation or any requirement of any such notice,

commits an offence.

(2) A person who is convicted of an offence against the provisions of subsection (1) is liable to the following penalties:—

- (a) If the fish to which the offence relates are rock lobsters—
 - (i) for the first offence, a fine of not less than \$200 nor more than \$750; and
 - (ii) for any subsequent offence, a fine of not less than \$750 nor more than \$1 500, and the court before whom the person is convicted shall in any case cancel the fisherman's licence held by that person and also, if the boat

used by that person in the commission of the offence has been used previously in relation to an offence under this section of which that person or another person was convicted, cancel the licence issued in respect of that boat.

- (b) If the fish to which the offence relates are other than rock lobsters or if the offence relates to marine algal life—
- (i) for the first offence, a fine of not less than \$50 nor more than \$250; and
 - (ii) for any subsequent offence, a fine of not less than \$250 nor more than \$750.

[Section 12 substituted by No. 50 of 1965 s. 17; amended by No. 113 of 1965 s. 8; No. 38 of 1966 s. 7; No. 61 of 1969 s. 7; No. 30 of 1975, s. 6; No. 60 of 1979 s. 16.]

Minister may declare proclaimed fishing zones

12A. (1) In this section, “proclaimed fishing zone” means a specific portion of the State that the Governor by proclamation made pursuant to the provisions of this section as those provisions existed immediately prior to the coming into operation of the *Fisheries Act Amendment Act 1969*¹, declared, or the Minister by notice published in the *Government Gazette* pursuant to this section, declares to be a proclaimed fishing zone for the purposes of this Act.

(2) The Minister may at any time and from time to time declare a specific portion of the State south of the thirty-second parallel being any part of the seashore up to high water mark, and any portion of Western Australian waters contiguous to that part of the seashore, to be a proclaimed fishing zone for the purposes of this Act during any specified time in any specified year or during a specified portion of every year.

(3) A proclamation made under this section—

- (a) shall specify and describe the part of the seashore and contiguous waters declared by the proclamation to be a proclaimed fishing zone;
- (b) shall specify the period during which the portion of the State specified and described in the proclamation shall be a proclaimed fishing zone;
- (c) may be cancelled or from time to time varied, or an error in the proclamation may be rectified, by a subsequent proclamation.

[Section 12A inserted by No. 63 of 1964 s. 2; amended by No. 4 of 1969 s. 7; No. 72 of 1974 s. 17.]

Additional powers of Director

12B. In addition to all other powers that he has under this Act, the Director shall, in respect to any proclaimed fishing zone, have the following powers—

- (a) to authorize in writing in the prescribed form any person or persons to enter in or upon a proclaimed fishing zone and remain therein or thereon under and subject to such conditions and for such period or periods as the Director may determine and shall specify in the authority;
- (b) to regulate and control in such manner and by such means as he may think fit, the use of the proclaimed fishing zone and the behaviour, conduct and activities while therein or thereon of any person authorized by him to enter in or upon that proclaimed fishing zone;
- (c) to erect and display, and at any time alter or remove, such signs and notices as the Director may from time to time think necessary or convenient for facilitating the effective control and use of the proclaimed fishing zone, and either verbally or in writing to make such requests and give such directions and orders as he may think necessary in the circumstances, and to require compliance therewith and with any sign or notice erected and displayed pursuant to this paragraph;
- (d) to regulate or prohibit the entry in or upon a proclaimed fishing zone, or the use within the same, of any vehicle, tractor, boat, outboard motor, engine, machinery, implement, appliance, line, net, pot, gear, or other article whatsoever whether of the same or a different kind.

[Section 12B inserted by No. 63 of 1964 s. 2; amended by No. 50 of 1965 s. 18.]

Delegation by Director

12C. (1) The Director may by writing signed by him delegate all or any of the powers conferred upon him by section 12B to any one or more of the inspectors under this Act, and every inspector to whom any power is so delegated may, during the period that any proclaimed fishing zone is declared so to be, exercise in respect to that proclaimed fishing zone the power so delegated in the same manner and with the same effect as if it were directly conferred upon him by this Act and not by delegation.

(2) Where the exercise of the power is dependent upon the opinion, or belief, of the Director in relation to any matter, that power when delegated may be exercised by the delegate upon his opinion, or belief, in relation to the matter.

(3) An inspector who purports to exercise a power pursuant to a delegation conferred upon him under the provisions of this section is presumed to do so in accordance with the terms of the delegation in the absence of proof to the contrary.

(4) Any delegation made pursuant to this section may be revoked wholly or in part by the Director at any time, but no delegation shall prevent the Director from exercising personally any power delegated by him under this section.

(5) Subsection (1) does not limit the generality of section 5A but the approval of the Minister is not required in respect of a delegation made pursuant to this section.

[Section 12C inserted by No. 63 of 1964 s. 2; amended by No. 50 of 1965 s. 19; No. 38 of 1966 s. 8; No. 70 of 1982 s. 9.]

Penalty for offences in respect of proclaimed fishing zones

12D. A person who—

- (a) enters in or upon a proclaimed fishing zone without first obtaining the authority in writing of the Director or his lawful delegate;
- (b) by act or omission contravenes or attempts to contravene any of the provisions of section 12B; or
- (c) refuses or neglects to comply with and obey any requirement of the Director or his lawful delegate, or of any sign or notice, to do or refrain from doing any act or thing within a proclaimed fishing zone,

commits an offence against this Act.

Penalty: A fine of not less than \$50 nor more than \$750.

[Section 12D inserted by No. 63 of 1964 s. 2; amended by No. 50 of 1965 s. 20; No. 113 of 1965 s. 8; No. 60 of 1979 s. 16; No. 70 of 1982 s. 10.]

Restrictions on purchase of fish by certain persons

13. (1) A person who carries on business as a fish shop, hotel, restaurant, fish auction, fish market or other commercial enterprise in the course of which fish, whether processed or unprocessed, is sold to other persons—

- (a) shall not purchase any fish or any fish of a particular species from another person who is prohibited by or under this Act or by the conditions subject to which a licence is issued under this Act from selling fish or fish of that species, as the case may be; and
- (b) shall, when purchasing any fish from any person or immediately thereafter, make a legible record of—
 - (i) the quantity and species or variety of the fish purchased;
 - (ii) the date of that purchase; and
 - (iii) the name and address of the person from whom he purchased the fish.

(2) A person who makes a record referred to in subsection (1) (b), which record he knows to be false in a material particular, commits an offence.

(3) In subsection (1)—

“processed” means broken up, canned, cooked, cut up, filleted, frozen, packed, prepared, preserved or otherwise treated in any manner whatever and “unprocessed” shall be construed accordingly;

“sold to other persons” includes sold to other persons as the whole or part of meals provided by a hotel or restaurant.

[Section 13^a inserted by No. 60 of 1979 s. 6.]

[14. Section 14 repealed by No. 48 of 1949 s. 5.]

[15. Section 15 repealed by No. 48 of 1949 s. 6.]

[16. Section 16 repealed by No. 48 of 1949 s. 7.]

Granting of licences discretionary and may be upon conditions

17. (1) The granting, renewal, removal or transfer, whether with or without conditions as hereafter in this section mentioned, of any licence shall not be deemed to be as of right, but shall, subject as hereinafter provided, be in the discretion of the officer appointed to issue licences (hereinafter in this section referred to as “the Licensing Officer”).

(2) Every Licensing Officer, other than the Minister, shall obey, and observe such directions, (including the imposition of conditions), as the Minister may give him regarding the granting, renewal, removal or transfer of licences or of any particular licence, and any grant, renewal, removal, or transfer of any licence contrary to any such direction shall be null and void.

(3) Subject to any direction of the Minister, the Licensing Officer may in his discretion grant, renew, remove or transfer any licence, upon conditions which shall be reduced to writing and may be endorsed on the licence. Such conditions may be added to, varied, cancelled or suspended at any time and from time to time during the currency of the licence, and may include conditions relating to any one or more of the following—

- (a) restricting the presence and use of any boat licensed pursuant to this section to such waters as he shall think fit;
- (b) limiting and defining the days upon and the period during which any such boat may be used for catching fish for sale or for taking marine algal life;
- (c) limiting and defining the port, harbour, wharf, jetty, beach or portion of coastline or any 2 or more of them which any such boat may enter or use during the currency of the licence;

- (d) limiting and defining the species and quantities of fish which any such boat may hold or carry during any period of the year specified by the Licensing Officer;
- (da) the times, places and manner of taking fish, the species and quantity of fish to be taken, the possession, storage, cutting up, handling, preservation, protection, treatment and disposal of fish and portions of fish, and otherwise any dealing with fish or portions of fish;
- (db) limiting the number of rock lobster pots that any such boat may carry or use at any one time when engaged in the taking of rock lobsters;
- (e) such other conditions as the Minister may consider shall be in the interests generally of the fishing industry or of the State.

(3a) The Minister may in his discretion at any time, by notice in writing given to the licensee, suspend for any period he may think fit, or cancel, any licence issued under this Act.

(4) Any person who considers himself aggrieved by the refusal of a licence or of the renewal, removal, suspension, cancellation or transfer of a licence, or by the imposition of any one or more conditions, may appeal to the Minister, who may if he thinks fit direct the licence to be issued, renewed, removed, restored or transferred or to remain suspended or cancelled, as the case may be, either without conditions or subject to the same or other conditions, as he shall think fit.

(5) Any person who—

- (a) commits a breach of or fails to observe a condition of his licence;
- (b) uses his boat, or permits or suffers his boat to be used, contrary to any condition to which his licence is subject; or
- (c) being a person whose professional fisherman's licence has been suspended or cancelled by the Minister, enters on any licensed fishing boat during the period of suspension or, while his licence is cancelled,

commits an offence.

Penalty: For a first offence, a fine of not less than \$500 or more than \$1 000; for a second or subsequent offence, a fine of not less than \$1 000 or more than \$2 500; and, if the offence is a continuing offence, an additional fine of not more than \$50 for each day during which the offence continues.

(6) This section shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative powers of the Parliament of this State, to the intent that, where any provision herein would, but for this subsection, be construed as being in excess of those powers, it shall nevertheless be deemed to be validly enacted to the extent to which it is not in excess of those powers, and to

the extent to which it is so in excess, or is repugnant to a law of the Commonwealth, be deemed to be severable from the other provisions of this section and of this Act, and not to affect the validity or operation thereof.

[Section 17^A substituted by No. 22 of 1946 s. 3; amended by No. 48 of 1949 s. 8; No. 55 of 1951 s. 6; No. 63 of 1962 s. 4; No. 50 of 1965 s. 21; No. 67 of 1965 s. 4; No. 113 of 1965 s. 8; No. 38 of 1966 s. 9; No. 61 of 1969 s. 7; No. 60 of 1979 s. 16.]

Returns

18. (1) Every person engaged in any of the operations referred to in subsection (2) shall furnish a return in writing in or to the effect of the prescribed form as to the catch, sales, output, purchases, receipts, fishing gear used, time occupied in fishing, or business of that person.

(2) The operations in respect of which a return is required to be furnished under this section are—

- (a) the taking of fish for sale;
- (aa) the taking of any species of fish for use by professional fishermen as bait;
- (ab) the taking for any purpose of any species of any aquatic organism which the Minister has by notice issued pursuant to section 10 declared to be a protected species;
- (ac) the taking for sale of any aquatic organisms other than fish;
- (ad) the dealing in or purchase for resale or the export or import of live fish or other aquatic organisms or their products;
- (ae) the cultivation or farming of fish or other aquatic organisms including stocking, breeding, rearing, sale, translocation and disposal;
- (b) the sale of fish at any market or at any establishment at which fish is sold which has not passed through a market;
- (c) the preserving, curing, smoking, drying, or salting of fish;
- (ca) the processing, filleting and packing of fish;
- (d) the canning, packing, or bottling of fish, parts of fish, or of any fish product intended for human consumption;
- (e) the preparation of fertilizers from fish, or of any fish produce or by-product not intended for human consumption;
- (f) the carriage of fish, parts of fish, or fish product, and the purchasing and receiving of fish;
- (g) the furnishing of accurate information as to locality from which different varieties are taken.

(3) Any person required to furnish a return under this section shall furnish that return at such time, in respect of such period and to such person, as may be prescribed, and shall set out in the return such particulars as to the weight, quantity, value or price of any one or more varieties of fish or parts of fish or fish product or aquatic organism and as to the locality in which any fish or any one or more varieties or species of fish or aquatic organism were taken, as may be prescribed.

(4) Any person who neglects or fails to furnish a return in accordance with this section, or who furnishes any false information in any such return, commits an offence and is liable on conviction to a penalty of not less than \$100 nor more than \$750.

[Section 18 substituted by No. 48 of 1949 s. 9; amended by No. 20 of 1961 s. 4; No. 50 of 1965 s. 22; No. 113 of 1965 s. 8; No. 72 of 1974 s. 18; No. 60 of 1979 s. 16.]

Secrecy of information

19. (1) A person who discloses or makes use of any information—

- (a) contained in a return furnished under section 18 (1); or
- (b) furnished to him or obtained by him under this Act or in connection with the execution of this Act,

commits an offence unless that information is disclosed or used—

- (i) with the prior consent in writing of the person to whose activities that information relates;
- (ii) for the purpose of giving effect to the objects of, and in the performance of a duty under, this Act; or
- (iii) in circumstances in which that disclosure or use is permitted by this Act.

(2) A person having the custody of information referred to in subsection (1) shall, notwithstanding anything contained in any other law, not be required by subpoena or otherwise to produce that information to any court.

[Section 19 inserted by No. 60 of 1979 s. 7.]

[19A. Section 19A repealed by No. 72 of 1974 s. 20.]

Exemption of implements used for catching scientific specimens

20. Nothing in the provisions of—

- (a) any notice published in the *Government Gazette* under section 9 or 10; or

(b) any notice referred to in section 10 (3), of this Act shall apply to the nets or dredges or other implements used for the purpose of catching specimens for scientific purposes by the holders of permits issued by the Minister.

[Section 20 substituted by No. 60 of 1979 s. 8.]

Penalties for using unlawful nets

21. (1) If any person shall, for the purpose of catching fish, use any net of a length or depth greater, or having meshes smaller, than such as are declared lawful, whether by proclamation or by notice under this Act, that person shall be deemed to be using an unlawful net.

Penalty: For a first offence, a fine of not less than \$50 or more than \$250; for a second or subsequent offence, a fine of not less than \$250 or more than \$750.

(2) Every person aiding or assisting in the use of such unlawful net shall be liable to the like penalties.

(3) When any unlawful net shall be found by any inspector in any water or waters specified in a subsisting proclamation or notice issued under the provisions of the former section 19, now repealed⁵, or under section 10, without any person in actual possession thereof, or on a boat in such water or waters, the inspector may seize such net, and such inspector, or another inspector shall give the prescribed notice and take the action mentioned in section 49 in the case of a net seized in closed waters, and the provisions of that section shall, *mutatis mutandis*, apply in respect of any unlawful net seized under this subsection.

[Section 21⁴ amended by No. 35 of 1940 s. 9; No. 22 of 1946 s. 4; No. 50 of 1965 s. 25; No. 113 of 1965 s. 8; No. 72 of 1974 s. 22; No. 60 of 1979 s. 16.]

Method of dredging or drawing nets

22.⁴ It shall be unlawful to drag or draw ashore, or into any boat, any net containing fish in such a way or to such a distance from the water as to prevent underweight or undersize fish from escaping through the meshes or by the wings of the net into the water, or to allow such underweight or undersize fish to remain on the shore, or in any boat.

Waters not to be stalled

23. The setting of any net, netting, brushwood, or other substance across or within any bay, inlet, river, or creek, or across or around any flat, in tidal or inland waters, in such a manner that fish enclosed thereby are or may be left stranded, or that immature fish may be destroyed thereby, is hereby declared to be an offence under this Act.

It shall be unlawful to place, set, or use, in inland waters, any trap or device enclosed with wire or wire netting with wings so attached as to impede the free passage of fish on either side of the trap or device, and any person found contravening this section is guilty of an offence and such trap or device and wings shall be forfeited.

[Section 23⁴ amended by No. 113 of 1965 s. 8; No. 30 of 1975 s. 7.]

Minister may Gazette requirements as to rock lobster pots

23A. (1) The Minister may, by notice published in the *Government Gazette*, declare that every rock lobster pot shall have inserted therein in such position as is specified in the notice, a device of such type, construction and material, and of such dimensions, as are specified in the notice or alternatively shall have therein in such position (if any) as is specified in the notice, a gap of such dimensions as are specified in the notice.

(2) A person who on or after 1 January 1966, has in his possession or on or in his premises or boat, or uses or causes or permits to be used, a rock lobster pot that does not comply with the requirements of any notice published under subsection (1), commits an offence.

Penalty: In respect of each rock lobster pot the subject of the offence of which the offender is convicted—

- (a) for a first offence, a fine of not less than \$25 or more than \$50; and
- (b) for a second or subsequent offence, a fine of not less than \$50 or more than \$100.

(3) Any inspector may seize any rock lobster pot that does not comply with the requirements of a notice published under subsection (1), and the court by which a person is convicted of an offence under this section shall, in addition to any penalty inflicted by it for that offence, order that any rock lobster pot so seized be destroyed.

[Section 23A inserted by No. 50 of 1965 s. 26; amended by No. 113 of 1965 s. 8; No. 61 of 1969 s. 7; No. 60 of 1979 s. 16.]

Penalty for having underweight or undersize fish in possession

24. (1) A person who without lawful authority—

- (a) has in his possession or control, or on his premises, or in any boat, vehicle, or aircraft or in any receptacle for fish, any fish (whether taken within Western Australian waters or elsewhere);
- (b) sells or causes to be sold, offers or exposes for sale, gives or consigns any fish (whether taken within Western Australian waters or elsewhere); or
- (c) brings into Western Australian waters or into the State any fish, of any of the species mentioned in the Second Schedule, of a less length than that set opposite to the name of that fish in that Schedule, commits an offence.

(1a) A person who is convicted of an offence under subsection (1) is liable—

- (a) subject to the provisions of paragraphs (b) and (c) for a first offence to a fine of not less than \$50 or more than \$100 and for a second or subsequent offence to a fine of not less than \$100 or more than \$750; or
- (b) if any of the fish the subject of that offence are rock lobsters and those rock lobsters do not exceed in number one-twentieth of the total number of rock lobsters which at the time of that offence the person convicted had in his possession or under his control or on his premises or in any boat, vehicle or aircraft or in any receptacle for fish, or sold or caused to be sold, offered or exposed for sale, gave or consigned, or brought into Western Australian waters or into the State—
 - (i) for a first offence, to a fine of not less than \$50 or more than \$250;
 - (ii) for a second offence, to a fine of not less than \$250 or more than \$500;
 - (iii) for a third or subsequent offence, to a fine of not less than \$500 or more than \$1 500; or
- (c) if any of the fish the subject of that offence are rock lobsters and those rock lobsters exceed in number one-twentieth of the total number of rock lobsters referred to in paragraph (b)—
 - (i) for a first offence, to a fine of not less than \$100 or more than \$500;
 - (ii) for a second offence, to a fine of not less than \$500 or more than \$1 000;
 - (iii) for a third or subsequent offence, to a fine of not less than \$1 000 or more than \$2 500.

(1b) Any inspector may seize all fish specified in subsection (1), and all other fish contained in any boat, vehicle or aircraft, or in any receptacle for fish, containing more of such specified fish than one-twentieth in number of the whole number of fish contained in that boat, vehicle or aircraft or in that receptacle, and may also seize any receptacle in which the fish so seized are contained, and all fish and receptacles seized by the inspector pursuant to the provisions of this subsection shall be forfeited to the use of Her Majesty.

(2) The provisions of this section shall not apply to any curator of a museum or zoological collector holding a permit from the Minister, or to any inspector.

(3) A person who at any time—

- (a) has in his possession or control, or on his premises, or in any boat, vehicle or aircraft; or

- (b) sells or causes to be sold, offers or exposes for sale, gives, or consigns,

any female of the fish known as or called "rock lobster" having eggs or spawn attached beneath its body, or which has been captured with eggs or spawn so attached, whether that fish was taken within Western Australian waters or elsewhere, commits an offence.

Penalty: For the first offence, a fine of not less than \$200 nor more than \$500; and for any subsequent offence, a fine of not less than \$500 nor more than \$1 000.

(3a) Any inspector may seize all rock lobsters specified in subsection (3), and all other rock lobsters contained in any boat, vehicle or aircraft, or in any receptacle for fish, containing more of such specified rock lobsters than one-twentieth in number of the whole number of rock lobsters contained in that boat, vehicle or aircraft or in that receptacle, and may also seize any receptacle in which the rock lobsters so seized are contained, and all rock lobsters and receptacles seized by the inspector pursuant to the provisions of this subsection shall be forfeited to the use of Her Majesty.

(3b) The court by which a person is convicted of an offence under either of subsections (1) and (3) shall, in addition to any penalty inflicted for that offence, impose on that person a further penalty of not less than \$5 nor more than \$25 in respect of every undersize rock lobster seized pursuant to this section, and of not less than 25 cents nor more than 50 cents in respect of every fish so seized other than rock lobsters; and where the fish so seized are rock lobsters the court shall also—

- (a) if the offence is a second offence, suspend from such date and for such period as the court thinks fit, not being any period between 1 June and the next following 15 November in any year, all licences held by that person under this Act; and
- (b) if the offence is a third, or any subsequent offence, cancel all such licences.

(3c) Where under the provisions of subsection (3b) the court suspends or cancels any licence, the order for suspension, or as the case may be, cancellation, shall apply also to any boat that was used for or in connection with the offence for which the offender was convicted, whether the licence issued in respect of that boat is held by the offender or by some other person.

(4) In any prosecution of any person for an alleged offence against the provisions of this section, it shall be no defence to him to prove that he is only the servant or agent of the owner of the fish concerned or is only entrusted for the time being with the fish by such owner, but the servant or agent and the owner shall each be liable.

(5) If the person charged, being a servant or agent, proves that at the material time, the fish were in the same state as that in which he received them from his employer or principal, and at the material time he had no

knowledge that the fish were of a less length than that referred to in subsection (1), he may, notwithstanding that his employer or principal has himself been convicted and fined, recover from the employer or principal the amount of any penalty for which he may have been convicted in respect of the charge, together with the costs paid or to be paid by him upon the conviction and those incurred by him in and about his defence thereto.

(6) Where a servant or agent is so convicted, the court of summary jurisdiction may suspend the operation of the conviction for any period not exceeding 3 months so as to enable the defendant to recover the amount of the fine and costs from the employer or principal.

[Section 24^a amended by No. 9 of 1913 s. 5; No. 35 of 1940 s. 10; No. 48 of 1949 s. 10; No. 55 of 1951 s. 7; No. 46 of 1960 s. 4; No. 20 of 1961 s. 5; No. 50 of 1965 s. 27; No. 113 of 1965 s. 8; No. 38 of 1966 s. 10; No. 61 of 1969 s. 7; No. 60 of 1979 s. 16.]

Penalty for having undersize rock lobster tails in possession

24A. (1) A person who without lawful authority—

- (a) has in his possession or control, or on his premises, or in any boat, vehicle, or aircraft; or
- (b) sells or causes to be sold, offers or exposes for sale, gives or consigns,

any rock lobster tail of a weight less than the weight prescribed, whether the rock lobster was taken within Western Australian waters or elsewhere, commits an offence.

(1a) A person who is convicted of an offence against subsection (1) is liable to the following penalties—

- (a) if the rock lobster tails the subject of the offence do not exceed in number one-twentieth of the total number of rock lobster tails that at the time of the offence the person convicted had in his possession or control or on his premises or in any boat, vehicle or aircraft or in any receptacle for fish, or sold or caused to be sold, offered or exposed for sale, gave or consigned—
 - (i) for a first offence, a fine of not less than \$50 or more than \$250;
 - (ii) for a second offence, a fine of not less than \$250 or more than \$500;
 - (iii) for a third or subsequent offence, a fine of not less than \$500 or more than \$1 500 and;

- (b) if the rock lobster tails the subject of the offence exceed in number one-twentieth of the total number of rock lobster tails as referred to in paragraph (a)—
 - (i) for a first offence, a fine of not less than \$100 or more than \$500;
 - (ii) for a second offence, a fine of not less than \$500 or more than \$1 000;
 - (iii) for a third or subsequent offence, a fine of not less than \$1 000 or more than \$2 500.

(2) Any inspector may seize all rock lobster tails of a weight less than the weight prescribed, and all other rock lobster tails contained in any boat, vehicle or aircraft or in any receptacle for fish, containing more of such rock lobster tails of a weight less than the weight prescribed than one-twentieth in number of the whole number of rock lobster tails contained in that boat, vehicle or aircraft or in that receptacle, and may also seize any receptacle in which the rock lobster tails so seized are contained, and all rock lobster tails and receptacles seized by the inspector pursuant to the provisions of this subsection shall be forfeited to the use of Her Majesty.

(3) A court convicting a person of an offence under subsection (1) shall, in addition to imposing a penalty under subsection (1a)—

- (a) impose on the person an additional penalty of not less than \$10 or more than \$25 in respect of each rock lobster tail of a weight less than the prescribed weight seized pursuant to subsection (2); and

(b) if that offence is—

- (i) a second offence, suspend from such date and for such period, not being a date which, or a period the whole or any part of which, falls within the period between 1 June and the next following 15 November in any year, as that court thinks fit; or

(ii) a third or subsequent offence, cancel,

all licences held by the person under this Act.

(4) In any prosecution of any person for an alleged offence against the provisions of this section, it shall be no defence to him to prove that he is only the servant or agent of the owner of the fish concerned or is only entrusted for the time being with the fish by such owner, but the servant or agent and the owner shall each be liable.

(5) If the person charged, being a servant or agent, proves that at the material time, the fish were in the same state as that in which he received them from his employer or principal, and at the material time he had no

knowledge that the fish were of a less weight than that referred to in subsection (1), he may, notwithstanding that his employer or principal has himself been convicted and fined, recover from the employer or principal the amount of any penalty for which he may have been convicted in respect of the charge, together with the costs paid or to be paid by him upon the conviction and those incurred by him in and about his defence thereto.

(6) Where a servant or agent is so convicted, the court of summary jurisdiction may suspend the operation of the conviction for any period not exceeding 3 months so as to enable the defendant to recover the amount of the fine and costs from the employer or principal.

[Section 24A inserted by No. 46 of 1960 s. 5; amended by No. 20 of 1961 s. 6; No. 50 of 1965 s. 28; No. 113 of 1965 s. 8; No. 38 of 1966 s. 11; No. 61 of 1969 s. 7; No. 72 of 1974 s. 23; No. 60 of 1979 s. 16.]

Receptacles containing fish to be labelled

24B. (1) Subject to the provisions of subsection (4), a person who delivers or consigns to another person any fish for the purpose of the sale or disposal of such fish, whether in the same or a different form, by that other person shall attach, or cause to be attached, securely to the bag, basket, box or other receptacle containing the fish a label in the form and of the type prescribed on which there is legibly endorsed—

- (a) the name and place of abode of the person so delivering or consigning the fish; and
- (b) where the fish so delivered or consigned are rock lobsters—the registered number allotted under the regulations to the fishing boat used in taking those rock lobsters.

(2) A person shall not take delivery of, accept for consignment, or carry or transport in any boat, vehicle or aircraft, any bag, basket, box or other receptacle containing fish unless that bag, basket, box or receptacle has attached securely to it the prescribed label as required by subsection (1) or is one which by virtue of the provisions of subsection (4) is not required to be labelled.

(3) A person who fails to comply with any of the provisions of subsections (1) and (2) commits an offence.

Penalty: A fine of not less than \$100 nor more than \$750.

(4) In cases where he is of opinion that by reason of special circumstances labelling of any bag, basket, box or other receptacle containing fish pursuant to the provisions of subsection (1) is not necessary, the Minister may by notice in writing exempt any person or class of persons from the provisions of that subsection, or may so exempt from those provisions any person consigning or delivering any bag, basket, box or other receptacle containing fish or a class of fish to be specified in the notice, and may at any time in like manner cancel any such exemption.

(4a) (a) The Minister may by writing signed by him delegate all or any of the powers conferred upon him by subsection (4), with the exception of this power of delegation, to the Director, who may thereupon exercise the power so delegated in the same manner and with the same effect as if it were directly conferred upon him by that subsection and not by delegation, and where the exercise of the power is dependent upon the opinion of the Minister in relation to any power, that power may be exercised by the Director upon his opinion in relation to the matter.

(b) The Director when purporting to exercise power pursuant to a delegation conferred under the provisions of this subsection is presumed to do so in accordance with the terms of the delegation in the absence of proof to the contrary.

(c) Every delegation of power pursuant to the provisions of this subsection may be revoked wholly or partly by the Minister at any time, and no delegation shall prevent the Minister from exercising the power.

(5) All fish delivered, consigned, carried or transported in any bag, basket, box or other receptacle not bearing the prescribed label in accordance with the provisions of this section shall be forfeited, and any inspector may seize the same.

(6) In this section the term, "fish" includes rock lobster tails.

[Section 24B inserted by No. 46 of 1960 s. 5; amended by No. 20 of 1961 s. 7; No. 50 of 1965 s. 29; No. 113 of 1965 s. 8; No. 61 of 1969 ss. 4 and 7; No. 60 of 1979 s. 16.]

Possession of rock lobster flesh

24C. (1) Subject to subsection (2) a person who, as principal or agent, has in his possession or on his premises or in any cold store, or gives, consigns, sells, attempts to sell, or offers or exposes for sale, any flesh or other portion of a rock lobster, except where that flesh or other portion is rock lobster tail of not less than the prescribed weight, commits an offence.

Penalty: A fine of \$3 000.

(2) The Minister may, by notice published in the *Government Gazette*, declare that the utilization of any specified portion of the rock lobster carapace in the manner therein described shall not be taken to constitute an offence against subsection (1), whether or not that portion is less than the prescribed weight, and effect shall be given to any such declaration.

[Section 24C inserted by No. 50 of 1965 s. 30; amended by No. 113 of 1965 s. 8; No. 61 of 1969 s. 7; No. 72 of 1974 s. 24; No. 60 of 1979 s. 16.]

Penalty where offender operates processing works

24D. Notwithstanding the provisions of sections 24, 24A and 24C, if a person who is convicted of an offence in respect of rock lobsters or rock lobster tails under any provision of those sections owns, operates or conducts any premises in or on which rock lobsters are cut up, broken up, packed, frozen or otherwise processed in any manner whatsoever, or any boat that is licensed as a processing establishment pursuant to the provisions of Part IIIB, that person, if the rock lobsters or rock lobster tails relating to that offence are found or seized on or in those premises or that boat, or in the possession or control of that person on any other premises, is liable to the following pecuniary penalties in lieu of the pecuniary penalties provided by section 24 (1a) and (3), section 24A (1a) and section 24C—

- (a) for the first offence, a fine of not less than \$2 000 nor more than \$4 000; and
- (b) for any subsequent offence, a fine of not less than \$4 000 nor more than \$10 000.

[Section 24D inserted by No. 50 of 1965 s. 31; amended by No. 113 of 1965 s. 8; No. 38 of 1966 s. 12; No. 61 of 1969 ss. 5 and 7.]

Mutilation of fish

24E. (1) A person shall not mutilate any fish mentioned in the Second Schedule in such a manner that the legal minimum length of that fish cannot be precisely determined.

(2) A person who without lawful authority has in his possession or control, or on his premises, or in any boat, vehicle, or aircraft, any fish that has been so mutilated otherwise than in course of—

- (a) cooking or consumption on the premises, boat, vehicle or aircraft; or
- (b) processing in a licensed processing establishment,

whether that fish was taken in Western Australian waters or elsewhere, commits an offence.

(3) In any prosecution of any person for an alleged offence against the provisions of this section, an affidavit by the Director or a person authorized by the Director shall, in the absence of proof to the contrary, be sufficient evidence that the fish in question had been mutilated contrary to this section.

(4) A person who is convicted of an offence against subsection (1) or subsection (2) is liable to the following penalties—

- (a) if the fish involved in the offence are rock lobsters—
 - (i) for the first offence, a fine of not more than \$750; and
 - (ii) for a second or subsequent offence, a fine of not more than \$1 500; and

- (b) if the fish involved in the offence are not rock lobsters—
- (i) for the first offence, a fine of not more than \$2 for each fish up to a maximum of \$300;
 - (ii) for the second or any subsequent offence, a fine of not more than \$15 for each fish up to a maximum of \$750.

[Section 24E inserted by No. 72 of 1974 s. 25; amended by No. 60 of 1979 s. 16.]

Minister may amend Second Schedule

25. It shall be lawful for the Minister from time to time to amend the Second Schedule—

- (1) by altering the length set against the name of any species of fish contained in the said Schedule;
- (1a) by defining or altering the method whereby fish are measured for the purposes of this Act;
- (2) by adding to the said Schedule the names of any other species of fish, setting against the name of any such other species of fish the length under which it shall not be lawful to take such fish;
- (3) by omitting from the said Schedule the name and length of any species of fish therein mentioned.

Notice of every amendment made under this section shall be published in the *Gazette*, and thereupon the Second Schedule, as so amended, shall have full force and effect as if the amendment had been enacted in this Act.

[Section 25^a amended by No. 9 of 1913 s. 6; No. 46 of 1960 s. 6; No. 4 of 1969 s. 8.]

Dynamite, etc., not to be used

26. (1) It shall not be lawful by the explosion of dynamite or any explosive substance, or by means of any poisonous or noxious thing, to destroy or take fish in any Western Australian waters: And if any person shall explode any dynamite or any explosive substance in or under such waters, or place or cause to flow thereinto any poisonous or noxious thing, such person and all other persons assisting or being at the time in company of such person shall, for every such offence, be severally liable to a penalty not exceeding \$750 and not less than \$50: But nothing herein contained shall apply to any person duly authorized by the persons and in the manner to be prescribed by the regulations to explode torpedoes or dynamite in any such waters.

(2) If any person is found in possession of, or has in his boat, any dynamite or other explosive substance immediately after such explosion, it shall be *prima facie* evidence that such person caused such explosion.

[Section 26^a amended by No. 113 of 1965 s. 8; No. 60 of 1979 s. 16.]

Orders prohibiting pollution

26A. (1) Where in the opinion of the Minister any spraying, dusting, injection or other activity is likely, or if undertaken would be likely, to introduce into any waters, land or air any substance which might have a serious effect, whether at once or in the longer term, on any adjacent aquatic environment or the fish, aquatic plant or animal life therein, the Minister may, by an order in the prescribed form served on any person, prohibit that person or any other person under his control from undertaking, or continuing to undertake, that activity.

(2) Where a person is served with an order under subsection (1), he shall forthwith cease, and shall not commence or recommence, the activity so prohibited notwithstanding that he may be authorized to undertake that activity under the provisions of any other law, and shall ensure that the order is complied with by every person under his control.

(3) A person aggrieved by an order of the Minister under this section may appeal against the order to the Director of Conservation and Environment⁶ and the Minister shall have regard to any recommendations made to him by the Director of Conservation and Environment⁶.

(4) An order made under this section may be varied or revoked by the Minister at any time by another order, but unless so varied or revoked has effect for the period specified therein.

(5) A person who contravenes or fails to comply with the provisions of an order made under this section shall be guilty of an offence under this Act.

Penalty: A fine of \$2 500.

[Section 26A inserted by No. 72 of 1974 s. 26; amended by No. 60 of 1979 s. 16.]

Interference with fishing

26B. A person shall not, without lawful excuse—

- (a) prevent a person from lawfully fishing; or
- (b) interfere with, hinder or harass a person in the conduct of lawful fishing.

[Section 26B inserted by No. 70 of 1982 s. 11.]

Penalty for damaging lawful nets by placing obstacles on hauling ground

27. (1) If in any tidal water any person shall wilfully or maliciously drive or place any stake, log, stone, or other thing whatsoever, likely to damage a fishing net if dragged over or against it, or within the reach of a fishing net of lawful depth, and if any damage shall be sustained by any lawful fishing net through coming into contact with such stake, log, stone,

or thing, such person shall be guilty of an offence and be liable to a fine not exceeding \$750, and in addition shall pay such compensation to the owner of such net as may be awarded by the court convicting such person of the offence.

(2) Any person who shall place or moor a boat in such a position as to obstruct any fisherman from hauling a lawful net to shore, on any recognized hauling ground, and who, on being requested by such fisherman to remove or discontinue such obstruction shall, without reasonable or lawful excuse, refuse or neglect so to do, shall be guilty of an offence under this Act.

(3) Any person who in any waters negligently, wilfully or maliciously propels, steers, drives or uses any boat so as to damage any net, pot, trap, line or other implement, appliance or article that is being lawfully used for fishing shall be guilty of an offence against this Act and be liable to a fine not exceeding \$750, and in addition shall pay such compensation to the owner of the net, pot, trap, line or other implement, appliance or article as may be awarded by the court convicting such person of the offence.

(4) The provisions of this section do not affect the generality of section 26B.

[Section 27^A amended by No. 113 of 1965 s. 8; No. 60 of 1979 s. 16; No. 70 of 1982 s. 12.]

Name and place of abode to be stated when demanded

28. (1) Every person who is found by an inspector to be committing, or whom an inspector has reasonable grounds to suspect has committed, an offence against this Act, shall on the demand of that inspector state his true name and place of abode, and any person who refuses or neglects to comply with such demand, or who states a false or fictitious name or place of abode, commits an offence.

Penalty: A fine of not less than \$100 nor more than \$750.

[(2) repealed.]

[Section 28 substituted by No. 50 of 1965 s. 32; amended by No. 113 of 1965 s. 8; No. 60 of 1979 ss. 9 and 16.]

Protection of certain fish

29. (1) A person who—

- (a) sells or causes to be sold;
- (b) offers, exposes or advertises for sale;
- (c) takes, catches or has in his possession or control for the purposes of sale;

- (d) buys, deals or processes, or has in his possession or control or on his premises or in any vehicle, boat, barge or aircraft for the purposes of dealing or processing or sale,

any fish of any kind or species mentioned in the Schedule hereto shall, unless he is authorized so to do by a licence in respect of fish farming issued pursuant to Part V or by a permit issued by the Minister, be guilty of an offence and liable—

- (i) for a first offence, to a fine of not more than \$25 for each fish; and
 (ii) for a second or subsequent offence, to a fine of not more than \$100 for each fish.

(2) The Minister may from time to time by notice amend the said Schedule by adding thereto or omitting therefrom the name of any kind or species of fish. On any such amendment the amended Schedule shall be published in the *Government Gazette*, and after such publication this Act shall have effect as if the Schedule as for the time being amended were the Schedule referred to in the preceding subsection.

THE SCHEDULE

Common Name; Scientific name

All Freshwater Aquatic Organisms
 Crucian Carp, *Carassius carassius*
 Dugong, *Dugong australis*
 English or Redfin perch, *Perca fluviatilis*
 European Carp, *Cyprinus carpio*
 Freshwater cobbler or catfish, *Tandanus bostocki*
 Freshwater Crayfish (Marron), *Cherax tenuimanus*
 Freshwater Crayfish (all other species), *Cherax* spp
 Northern Freshwater Prawn (Cherabin), *Macrobrachium* spp
 Seals and Sea-lions (all species), Family *Phocidae*, Family *Otaridae*
 Trout (all species), *Salmo* spp

[The Schedule substituted in Gazette 19 January 1979 p. 134.]

[Section 29^a inserted by No. 24 of 1911 s. 3; amended by No. 113 of 1965 s. 8; No. 4 of 1969 s. 9; No. 72 of 1974 s. 27; No. 60 of 1979 s. 16.]

Foreign boats

29A.

[(1) repealed.]

(2) A person who, in Western Australian waters,—

- (a) uses a foreign boat for taking, catching or capturing fish;

- (b) uses a foreign boat for processing, preserving, storing or carrying fish that have been taken, caught or captured with the use of that boat or another boat; or
- (c) has in his possession or in his charge a foreign boat equipped with nets, traps or other equipment for taking, catching or capturing fish,

commits an offence.

(3) It is a defence to a prosecution for an offence against subsection (2) if the person charged satisfies the court—

- (a) that there was in force, at the time of the alleged offence, a licence under this Act authorizing the use of the boat for that purpose and in that area at that time; or
- (b) that all nets, traps or other equipment for taking, catching or capturing fish were stowed and secured and the boat was travelling by the shortest practicable route to or from a port in Western Australia.

(4) Where a person is convicted of an offence against subsection (2)—

- (a) the person convicted is liable to a fine of not more than \$2 500; and
- (b) the court, notwithstanding the imposition of a fine on the person convicted, may order that—
 - (i) the boat in relation to which the offence is committed;
 - (ii) any nets, traps or other equipment for taking, catching or capturing fish used by or found on that boat at the time of the offence; and
 - (iii) the fish on board that boat at the time of the offence or the proceeds of the sale of any such fish,

shall be forfeited to Her Majesty.

(5) Where any boat or other thing is liable under this section to be ordered to be forfeited to Her Majesty the court may recommend to the Attorney General that the whole, or a specified portion, of the proceeds of any sale of such a boat or other thing forfeited should be paid to a person specified by the court, but any boat or other thing ordered to be so forfeited shall be dealt with and disposed of in accordance with the directions of the Attorney General and pending his direction may be detained in such custody as the court directs.

(6) In any proceedings for an offence against this section an averment in the complaint that a boat was, at a material time, a foreign boat shall be deemed to be proved in the absence of proof to the contrary.

[Section 29A inserted by No. 30 of 1975 s. 8; amended by No. 60 of 1979 s. 16; No. 70 of 1982 s. 13.]

Aquatic reserves

30. (1) The Governor may, subject to such conditions and limitations as he thinks fit, by Order in Council reserve to Her Majesty any part of Western Australian waters vested in the Crown, and the land at any time covered by those waters, that may be required for the following objects and purposes—

- (a) For the use and requirements of the Government;
- (b) For the preservation of all or any specified forms of marine or freshwater animal or aquatic plant life, their products and fossils;
- (c) For the culture and propagation of fish or aquatic organisms, and for experimental purposes connected therewith; or
- (d) For such other purposes as the Governor deems to be in the public interest in relation to fisheries and allied matters.

(1a) No order shall be made under this section—

- (a) in respect of waters and land which comprise a marine nature reserve or a marine park under the *Conservation and Land Management Act 1984*; or
- (b) for any purpose for which a marine nature reserve or marine park could be constituted under that Act.

(2) Every Order made in pursuance of this section shall—

- (a) be published in the *Government Gazette*, and take effect at the time of such publication;
- (b) describe the boundaries of the area affected in sufficient details to enable them to be established by a reasonable person by reference to land marks, leading marks, buoys or other position markers specified therein;
- (c) specify the purpose for which the area is reserved; and
- (d) specify the conditions and limitations imposed in relation to that Order.

(3) No Order shall be made in pursuance of this section unless not less than 2 months before the making of the proposed Order a notice under the hand of the Director has been published in a newspaper circulating in the locality of the proposed reserve stating that it is intended to recommend to the Governor that an aquatic reserve be established in relation to the waters to be included in the proposed Order for the purpose to be specified in the Order, and inviting persons wishing to object to that proposal to make representations to the Director.

(4) A reserve created under this section may, by notice published in the *Government Gazette*, be vested by the Minister in a body corporate which shall administer that reserve subject to this Act, and every such notice shall—

- (a) describe the reserve so vested;

- (b) specify the body corporate in whom the reserve is vested;
- (c) specify the date on which the vesting is to take effect and the period of time for which the reserve is so vested;
- (d) specify the purpose for which the reserve is so vested; and
- (e) specify the conditions and limitations imposed in relation to that vesting.

(5) The Minister may, by order in writing to the body corporate in which a reserve is vested, require that body—

- (a) to do, or cause to be done, anything which the Minister considers to be essential; or
- (b) to cease to do, or cause the cessation of, anything which the Minister considers to be prejudicial,

to the purpose for which the reserve was created or to the environment or life therein.

(6) Where the Minister considers it to be in the public interest he may, by order in writing to the body corporate in which a reserve is vested, published in the *Government Gazette*, revoke the vesting of the reserve in that body and thereupon the reserve shall be deemed to be vested in the Minister freed from any obligation, condition, limitation or other restriction created or imposed in relation to the vesting so revoked.

(7) A reserve which is not vested in a body corporate under this section shall be deemed to be vested in the Minister.

(8) Any Order in Council, notice or order under this section may be varied or revoked in like manner.

[Section 30 inserted by No. 72 of 1974 s. 28; amended by No. 112 of 1984 s. 26.]

Classification of reserves

31. Where any land or any part of Western Australian waters is reserved to Her Majesty under section 30, the Governor may, by proclamation, and subject to such conditions as may be expressed therein, classify such land or waters as of Class A, and if so classified, such land or waters shall forever remain dedicated to the purpose declared in such proclamation until by an Act of Parliament in which such land or waters are specified it is otherwise enacted.

[Section 31 inserted by No. 72 of 1974 s. 29.]

Limited entry fisheries

32. (1) The Minister may, by notice published in the *Government Gazette*, declare any fishery in which fish, aquatic organisms or products are taken for sale or disposal for gain or reward to be a limited entry fishery.

(2) A notice under subsection (1) in relation to a limited entry fishery may specify—

- (a) the species of fish or aquatic organisms or products that constitutes the limited entry fishery;
- (b) a description of the waters included or not included;
- (c) the criteria which would be applied to determine the boats or persons which may operate in that fishery;
- (d) the maximum number of fishing boat licences and professional fisherman's licences which may be issued or endorsed so as to authorize the boat or person licensed to operate in relation to that fishery;
- (e) the procedure and form for issuing those licences and endorsements;
- (f) the period for which such a licence or endorsement shall be valid;
- (g) the number and type of fishing gear and fishing boats authorized to operate by such a licence or endorsement;
- (h) the manner, time, period and area of fishing and the means of capture that may or shall not be used either by specified boats or by all boats or by specified persons or by all persons;
- (i) the method of giving notice from time to time of the names and addresses of licensees authorized to engage in that fishery or in any specified operations in that fishery;
- (j) the names and registration numbers of boats so authorized; and
- (k) the method by which boats or persons authorized to operate in that limited entry fishery shall be replaced, and by which an authorization may be transferred.

(3) A licence or endorsement authorizing a boat or person to operate in a limited entry fishery shall be granted, and renewed, subject to the payment by the licensee of the prescribed annual fee in relation to that licence or endorsement which may be calculated, wholly or in part, by reference to the number of boats, nets, dredges, trawls, traps, pots, rock lobster pots, or other specified devices or things engaged in that fishery whether generally or by the particular licensee.

(4) A notice declaring any fishery to be a limited entry fishery may be varied or revoked by the Minister by notice published in the *Government Gazette*, and any such notice may suspend or cancel all or any part of the operations specified therein and may make provision for the refund or payment of the prescribed fees proportionately.

(5) A person who is not authorized to engage in that fishery may lawfully take or keep any fish, aquatic organism or product, the subject of a limited entry fishery, for his own personal use or pleasure, but may not sell or otherwise dispose of it for gain or reward.

(6) Subject to subsection (5), a person who is not authorized to do so by a licence or endorsement granted under this section and who in any limited entry fishery—

- (a) takes any species of fish or aquatic organisms or products that constitutes the limited entry fishery, or who sells or deals in any such fish or other thing;
- (b) operates any boat or uses, sets or operates any gear;
- (c) assists, invites or encourages a person to take or attempt to take or use any boat or to use or get or operate any gear;
- (d) allows or suffers a boat or gear to be operated or used or set,

contrary to the provisions of a notice under this section, or who fails to comply with any condition of a licence relating to that limited entry fishery, commits an offence.

(7) A person who is convicted of an offence under this section is liable to the following penalties—

- (a) for the first offence, a fine of not more than \$1 500;
- (b) for any subsequent offence, a fine of not more than \$15 000;
- (c) in relation to every offence, a further penalty in respect of every kilogram of the fish or other thing taken calculated at the rate of 10 times the wholesale value at the time of the offence; and
- (d) for a second or subsequent offence, every boat found to have been used or operated in the commission of that offence, and all gear and equipment pertaining to the boat at the time of the offence, may be ordered to be forfeited to Her Majesty.

(8) In any prosecution of any person for an alleged offence against the provisions of this section—

- (a) it shall be no defence for him to prove that he is only the servant or agent of the owner of the fish or other thing concerned, or is only entrusted for the time being with that fish or other thing by the owner, but the servant or agent and the owner shall each be liable;
- (b) if the person convicted is a servant or agent, the court may suspend the operation of the conviction for any period not exceeding 3 months so as to enable him to recover the amount of any penalty and costs from the employer or principal, notwithstanding that the employer or principal has himself been convicted;
- (c) the wholesale value per kilogram of any fish or other thing at the time of the offence shall be taken to be such amount as the Director, by affidavit, may declare;
- (d) any boat or other thing ordered to be forfeited to Her Majesty shall be seized and thereafter dealt with as the Attorney General directs and, pending his direction, may be detained in such custody as the court directs.

(9) Where any boat or other thing is liable to be ordered to be forfeited to Her Majesty—

- (a) the court may, before making an order for forfeiture, require notice to be given to, and hear, any persons claiming any financial or other interest therein; and
- (b) upon making an order for forfeiture the court may recommend to the Attorney General that the whole, or a specified portion, of the proceeds of any sale of such a boat or other thing forfeited should be paid to a person specified by the court.

[Section 32 inserted by No. 72 of 1974 s. 30; amended by No. 60 of 1979 s. 16.]

[Part IIIA repealed by No. 50 of 1965 s. 33.]

PART IIIB—PROCESSING ESTABLISHMENTS

[Part IIIB inserted by No. 67 of 1965 s. 6.]

Interpretation

35A. In this Part—

“licensee” means any person holding or entitled to exercise a processor’s licence within the meaning of this Part;

“processing”, in relation to fish, includes cutting up, breaking up, filleting, preparing, packing, freezing, canning, preserving or otherwise treating in any manner whatever;

“processing establishment” includes any land, jetty, premises, vehicle, boat, or other place whatever on or in which the processing of fish is carried out for the purposes of sale; but does not include premises, or the part of premises, in which fish are sold by retail to the public or in which meals are served to the public.

[Section 35A: See note under Part heading.]

Processing establishments to be licensed

35B. On and after 1 January 1966 a person shall not operate, or cause or permit to be operated on his behalf, any processing establishment unless he is the holder of a processor’s licence granted and in force under this Act in respect of that processing establishment.

Penalty: A fine of not less than \$2 000 or more than \$10 000 and, in addition, a fine of not less than \$250 or more than \$500 for each day during which the offence continues.

[Section 35B: See note under Part heading. s. 35B amended by No. 113 of 1965 s. 8; No. 60 of 1979 s. 16.]

Application for permit to construct

35C. (1) A person shall not construct or otherwise establish a processing establishment to be operated in any part of Western Australian waters or elsewhere in the State unless he is the holder of a permit granted by the Director under subsection (3) authorizing him so to do.

(2) An application for a permit to construct or otherwise establish a processing establishment shall be made in the prescribed manner and shall, if the Director so requires, be supported by such further or other information, plans and specifications as he thinks desirable to enable him to consider the application.

(3) Where the Director has considered an application and is satisfied—

- (a) that the proposed establishment would be constructed, equipped and capable of being operated in an efficient and hygienic manner and in conformity with the provisions of this Act and the regulations; and
- (b) that, having regard to the number of processing establishments or proposed processing establishments in respect of which permits under this section or processor's licences granted under section 35CA are then in force, to the sizes and natures of those establishments, and to such other considerations as the Director thinks relevant, it would be in the better interests of the fishing industry to grant the permit,

the Director may grant a permit under this section authorizing the applicant to establish the proposed processing establishment, and shall cause notice of the grant of the permit to be advertised in the prescribed manner.

(4) A permit under subsection (3) may be granted either unconditionally or subject to such conditions and restrictions as the Director specifies therein.

(5) The grant of a permit under subsection (3) shall not be deemed to be as of right, but where the Director refuses an application he shall advise the applicant, in writing, of the grounds of refusal.

[Section 35C substituted by No. 72 of 1974 s. 31.]

Processor's licences

35CA. (1) Where—

- (a) the Director has granted a person a permit to establish a processing establishment; and

- (b) the person has constructed or established a processing establishment in the manner and locality specified in the application for that permit, and in accordance with the conditions and restrictions, if any, specified in the permit,

the Director shall, upon application being made in the prescribed manner and payment of the fee prescribed for that licence, grant to that person a processor's licence in respect of that establishment.

(2) A licence granted under subsection (1) may be either unconditional or subject to such conditions and restrictions as the Director, by notice in writing, may from time to time impose.

(3) Every processor's licence is subject to the conditions that—

- (a) the holder of that licence shall not purchase fish for processing from any person who is not the holder of—
 - (i) a professional fisherman's licence or processor's licence granted pursuant to the provisions; or
 - (ii) a licence granted under Part V, of this Act;
- (b) the holder of that licence shall not for gain or reward of any kind process any fish whatsoever except in a processing establishment licensed in accordance with this section.

[Section 35CA inserted by No. 72 of 1974 s. 31; amended by No. 60 of 1979 s. 10.]

Suspension of a licence, renewals, extensions, and fees payable

35CB. (1) The grant or renewal of a processor's licence shall not be deemed to be as of right.

(2) The Director may, by notice in writing, wholly or in part suspend the operation of a processor's licence for a specified time or until specified conditions are fulfilled, and may cancel a licence.

(3) Unless suspended or cancelled, a processor's licence shall have effect for such period, not exceeding 12 months, as is endorsed on the licence, but the Director may, with the approval of the Minister, grant an extension of the period during which a licence is to have effect, whether or not the processing establishment is operating, for a further period of not more than 12 months.

(4) An application for the renewal or extension of a processor's licence shall be made to the Director in the prescribed manner, and if the Director is not satisfied as to the construction, equipment, operation or hygiene of the establishment, or as to the manner in which the provisions of this Act have been complied with in relation thereto, he may refuse the application.

(5) Where the Director refuses an application he shall advise the applicant, in writing, of the grounds of refusal.

(6) Every applicant for the grant of a processor's licence, and every applicant for the renewal or extension of a processor's licence if so required by the Director, shall furnish to the Director all particulars available to enable the Director to estimate the probable extent of the annual catches and purchases of fish for processing on or in the processing establishment to which the application relates.

(7) A fee shall be payable on the grant, renewal, or extension of a processor's licence the amount of which may be assessed, wholly or in part, by reference to the type, size, nature and locality of the processing establishment.

[*Section 35CB inserted by No. 72 of 1974 s. 31.*]

Transfer of processor's licence

35D. (1) The Director may on application in writing signed by the licensee and by a proposed transferee of the processor's licence, and on payment of the prescribed fee, transfer at any time that licence to such transferee by indorsement upon the licence in the form prescribed.

(2) Subject to this Act, every transferee shall until the end of the year for which the processor's licence was granted, or as the case may be, renewed, have all the rights of the licensee and shall be liable to the same duties, obligations and penalties as if that licence had been originally granted to him.

[*Section 35D: See note under Part heading.*]

Removal of processor's licence

35E. (1) Where the licensee of a processor's licence desires to remove that licence from the processing establishment the subject of that licence to any other processing establishment, the licensee shall make application in writing to the Director for an order for such removal and serve upon or send by registered letter to the owner of the processing establishment the subject of the licence notice of his application.

(2) The Director shall not make an order for removal unless he is satisfied that no valid objection to the removal applied for is made by the owner of the processing establishment the subject of the licence but, subject thereto, may in his discretion grant or refuse the application.

(3) If the Director grants the application an indorsement may be made upon the processor's licence in the form prescribed on payment of the prescribed fee, and the licence so indorsed shall have the same effect as if it had been originally granted in respect of the processing establishment specified in the indorsement, but as to the original processing establishment the licence shall be deemed to be cancelled.

[*Section 35E: See note under Part heading.*]

Suspension or cancellation of processor's licence

35F. Where the Director is satisfied that any breach of the conditions or restrictions to which the processor's licence was granted or renewed has been committed, or the licence fee or any part thereof payable in respect of that licence has not been paid within 14 days after becoming due and payable, the Director shall report the same to the Minister who may thereupon suspend the licence for such period as he thinks fit, or may cancel the licence.

[Section 35F: See note under Part heading.]

[**35G.** Section 35G repealed by No. 72 of 1974 s. 32.]

Licence fee, where processor's licence in force for less than a year

35H. (1) If a processor's licence is granted or renewed to have effect only during a specified portion of a year, such part only of the annual fee that would be payable in respect of that licence if it were granted or renewed for a year shall be payable as is proportionate to the period for which that licence is to have effect.

(2) Where a processor's licence is suspended, surrendered or cancelled under this Act, the Director may, with the approval of the Treasurer of the State, refund to the licensee such part of the annual fee paid by him as is proportionate to the period for which that licence has been suspended or by reason of its surrender or cancellation has ceased to be in force.

[Section 35H: See note under Part heading.]

[**35I.** Section 35I repealed by No. 72 of 1974 s. 33.]

Fees may be assessed

35J. Where the fees payable in respect of any processor's licence are required to be assessed and no information is furnished to the Director, or the information furnished is insufficient to enable him to assess the fees payable on the basis of such information, the Minister shall fix the amount of any such fees in such manner as he thinks reasonable and the amount so fixed shall be final and conclusive.

[Section 35J substituted by No. 72 of 1974 s. 34.]

Appeals

35K. (1) Subject to subsection (5), a person aggrieved by a decision or order of the Director under this Part may, within 14 days after publication of notice of that decision or order in the *Government Gazette*, appeal against that decision or order by serving on the Minister a statement in writing of the grounds of his appeal.

(2) On receiving a statement served on him under subsection (1), the Minister may modify or set aside or refuse to modify or set aside the decision or order against which an appeal has been made.

(3) The Minister may, before exercising the powers conferred on him by subsection (2), require the person referred to in subsection (1) to furnish him with such information in addition to that contained in the statement served on him by that person as the Minister thinks desirable to enable him to consider the appeal.

(4) A decision of the Minister made under subsection (2) shall be conclusive and binding on all parties to the appeal concerned.

(5) In subsection (1)—

“person aggrieved”, in relation to a decision of the Director to grant a permit under section 35C (3), includes a licensee and a person to whom any other permit has been granted under that subsection.

[Section 35K substituted by No. 60 of 1979 s. 11.]

Establishment of “Fisheries Research and Development Fund”

35L. (1) For the purposes of this Part there shall be established and kept at the Treasury an account to be called the “Fisheries Research and Development Fund”, which shall be administered by the Minister.

(2) There shall be paid to the credit of the Fund—

- (a) all fees received by the Director for processor’s licence fees under this Part or for the removal or transfer of such licences, and any moneys received or borrowed by the Minister in connection with the conservation and management of a limited entry fishery or received in respect of licences or authorizations issued in relation to any limited entry fishery;
- (b) the proceeds of sale of—
 - (i) fish taken in the course of the carrying out of any activities for which moneys in the Fund may be expended under subsection (3); or
 - (ii) any boat forfeited under section 32, or any boat, pot or other fishing gear of any description which has been purchased from the Fund or donated for any research, exploration, development, management or conservation project or programme;
- (c) the income derived from the investment of any money forming part of that Fund; and
- (d) any money that is paid or payable to the Director or to the Fund by way of gift, bequest or otherwise including any moneys received from any authority or person for any research, in-

vestigation, exploration, development, extension, service, management or conservation project or programme or other purpose approved by the Minister.

(3) The moneys in the Fund may be used and applied by the Minister in such manner and in such proportion as the Minister thinks fit for all or any of the following purposes—

- (a) scientific, technological or economic research in relation to fisheries;
- (b) investigation, exploration and development of fisheries, including the conservation and management of limited entry fisheries with provision for the payment of compensation for the withdrawal or diminution of the fishing rights of any person and for the purchase of boats or fishing gear of any description in connection with any such limited entry fishery;
- (c) the provision of extension services related to fisheries; and
- (d) assisting—
 - (i) the fishing industry; and
 - (ii) any body, whether incorporate or not, whose objects include assistance to, or promotion of, the fishing industry,

and not otherwise.

(4) Any moneys at any time standing to the credit of the Fund and not immediately required by the Minister for the purposes of subsection (3) may be temporarily invested by the Minister as the Treasurer of the State may direct.

[Section 35L: See note under Part heading. S. 35L amended by No. 73 of 1967 s. 4; No. 47 of 1971 s. 2; No. 72 of 1974 s. 36.]

Application of *Financial Administration and Audit Act 1985*

35M. The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of departments apply to and in respect of the Department and its operations, including the Fisheries Research and Development Fund.

[Section 35M substituted by No. 98 of 1985 Schedule 1.]

Access to books, etc.

35N. In addition to all other powers conferred on him by this Act the Minister, or any officer authorized by him in that behalf, shall at all times have full and free access to all buildings, places, books, documents and other papers for any of the purposes of this Part, and for that purpose may take extracts from or make copies of any such books, documents or papers.

[Section 35N: See note under Part heading.]

Minister may waive payment of licence fees

35O. Notwithstanding the provisions of this Part, the Minister, in any case where special circumstances exist which in his opinion warrant his so doing, may waive payment by a licensee of the whole or any part of the licence fee payable by him in any year in respect of the grant or renewal of a processor's licence, but the waiver of such payment shall not operate to exempt or discharge the licensee from his obligation to comply with any of the conditions or restrictions to which the processor's licence is subject.

[Section 35O: See note under Part heading.]

PART IV—MISCELLANEOUS

Minister may institute experiments

36. (1) It shall be lawful for the Minister from time to time to direct the institution and carrying out of experiments in methods of catching fish, and in the culture and propagation of fish, and to take steps for the discovery of fishing grounds suitable for trawling off the sea-coast.

[(2) and (3) repealed.]

[Section 36⁴ amended by No. 35 of 1940 s. 12; No. 50 of 1965 s. 34; No. 72 of 1974 s. 38.]

Noxious fish

36A. (1) The Governor may, by proclamation, declare fish of any species, race, variety or domesticated form and the eggs of any such fish to be noxious.

(2) The Governor may, by proclamation, declare any aquatic organism and the eggs, seeds, spores or other source of reproduction or offspring of that organism to be noxious.

(3) A person shall not, except under and in accordance with the prior written approval of the Director and subject to such conditions and restrictions as he may impose,—

- (a) grow, hatch, rear, keep, consign, or convey any noxious fish or noxious aquatic organism;
- (b) release into any waters any noxious fish or noxious aquatic organism; or
- (c) put into any container in which it can remain alive any noxious fish or noxious aquatic organism.

Penalty: For the first offence a fine of not more than \$1 500; and for a second or subsequent offence a fine of not more than \$15 000.

[Section 36A inserted by No. 72 of 1974 s. 39; amended by No. 60 of 1979 s. 16.]

Recapture or eradication

36B. (1) The Minister may, by notice published in the *Government Gazette*, order the recapture or eradication of any fish or aquatic organism and the eggs, seeds, spores or other source of reproduction, young or offspring of that fish or aquatic organism which is at large or is otherwise the subject of an offence against the provisions of this Act.

(2) All costs and expenses attributable to, or reasonably incurred with respect to, any measures taken, whether by an officer of the Department or any other person authorized by the Director, as a result of any act or omission which constitutes an offence against this Part or the regulations made in relation thereto and of which a person—

- (a) is convicted; or
- (b) acknowledges his responsibility,

may be recovered from that person as a debt due to the Minister.

[Section 36B inserted by No. 72 of 1974 s. 39.]

Export

36C. (1) The Minister may, by notice published in the *Government Gazette*, prohibit the export of any live fish or the eggs of any fish.

(2) A person who exports any live fish or the eggs of any fish contrary to the provisions of a notice published under subsection (1) or to any condition specified in relation to any licence, permit or other authorization under this Act commits an offence.

[Section 36C inserted by No. 72 of 1974 s. 39.]

[37. Section 37 repealed by No. 72 of 1974 s. 40.]

Restriction on taking of fish for certain purposes

38. (1) The Minister may, by notice published in the *Government Gazette*, declare that any species of fish, or any specified parts of any such fish, shall not be taken, sold, bought, processed, or used as bait or for manure or fertilizer, either—

- (a) unconditionally; or
- (b) except under and in accordance with the prior written approval of the Director and subject to such conditions and restrictions as he may impose.

(2) A person who contravenes the provisions of a notice published under subsection (1) commits an offence.

[Section 38 substituted by No. 72 of 1974 s. 41.]

Naming of fish

38A. (1) The Minister may, by notice published in the *Government Gazette*, ascribe to any species of fish, whether local or imported from overseas or brought into Western Australian waters or on to land, an official common name and authorized trade name or names for that particular group of species or type of fish.

(2) Where an official common name is ascribed to any fish that name shall be taken also to be an authorized trade name.

(3) The name of a fish ascribed to an Australian fish by the Australian Fisheries Council shall not be used as the trade name of any fish or the flesh or product of any fish which has been imported into Australia from overseas unless that name is prefixed by its country of origin.

(4) A person who sells, or offers or advertises for sale—

- (a) any fish to which an authorized trade name has been ascribed, under a name which is not the name ascribed to that species of fish; or

- (b) any fish to which an authorized trade name has not been ascribed, under a name which is, or is likely to be confused with, the authorized trade name of another species of fish,

commits an offence.

[Section 38A inserted by No. 72 of 1974 s. 42.]

Exclusive licences

39. (1) The Governor may grant to any person, on such terms and conditions as to the Governor may seem fit, a licence to the exclusion of all other persons to take, collect, and gather, for any term not exceeding 14 years, from any portion of the coastal waters of the State and the foreshore or adjacent land above high water-mark, being Crown lands within the meaning of the *Land Act 1933*, any marine animal or algal life or product of the sea not being any of the fish mentioned in the Second Schedule, or any amendment thereof.

(2) Save as hereinafter provided, it shall be unlawful during the currency of any licence granted under this section for any person, except the licensee, his servants or agents, or other persons acting with his authority, to take, collect, or gather any marine animal or algal life or product of the sea, for which such licence shall have been granted, within the portion of the coastal waters, foreshore, or adjacent land above high water mark, to which such licence extends.

Provided, nevertheless, that nothing herein shall prevent any person from taking, collecting, or gathering therein any such animal or algal life or products for his personal use and consumption but not for barter or sale.

Provided, also, that no licence shall be granted under this section, in respect of any length of foreshore exceeding 120.7 kilometres, until the expiration of 14 days after the draft of such licence has been laid upon the Table of each House of Parliament.

(3) The Governor may make regulations under and subject to which any licence granted under this section shall be held and may be transferred, or for the suspending for any period the operation of any licence on any portion of any foreshore or adjacent land in respect of turtle which the licensee has an exclusive right to take there, and prohibiting for that period the licensee and all other persons from there taking, killing, or molesting such turtle.

[Section 39^a substituted by No. 24 of 1911 s. 2; amended by No. 4 of 1921 s. 2; No. 38 of 1966 s. 14; No. 4 of 1969 s. 13; No. 94 of 1972 s. 4 (as amended by No. 19 of 1973).]

PART V—FISH FARMING

[Part V inserted by No. 72 of 1974 s. 43.]

Interpretation

39A. In this Part—

“fish farm” means any land, premises, vehicle, boat, lake, lagoon, estuary, drain, channel, impoundment or other place or waters whatever, used or intended to be used for the cultivation of fish; and

“to farm” in relation to fish means to cultivate or produce stocks of fish by acclimatization, propagation, spawning, hatching or breeding, rearing or raising, or otherwise employing human intervention in the life cycle of a species.

[Section 39A: See note under Part heading.]

Farm fish

39B. The Minister may, by notice published in the *Government Gazette*, declare any species, genus, family, order or other group of fish to be a farm fish for the purposes of this Act, and thereupon the provisions of this Part shall apply to that fish and the eggs of that fish.

[Section 39B: See note under Part heading.]

Fish farms

39C. (1) A person who—

- (a) farms any fish whether or not a farm fish, or commences or carries on the business of conducting a fish farm, or manages, operates or keeps a fish farm;
- (b) for the purpose of farming those fish takes, catches, traps, nets, buys, borrows or otherwise obtains or procures any farm fish by any means or in any manner;
- (c) cuts up, breaks up, fillets, prepares, packs, freezes, cans, preserves or otherwise processes or treats any farm fish;
- (d) sells, or takes for the purpose of sale any farm fish;
- (e) exports or sends out of the State any farm fish;
- (f) brings into the State from any place outside the State any viable fish or aquatic organism or the eggs, seeds, spores or other source of reproduction, young or offspring of any such fish or aquatic organism;
- (g) releases from any aquarium, fish farm, or other place or means of confinement whatever, any fish or aquatic organism whatever or the eggs, seeds, spores or other source of reproduction, young or offspring of any such fish or aquatic organism; or

- (h) acclimatizes or attempts to acclimatize by any means any fish or aquatic organism whatever,

commits an offence under this Act, unless that person is the holder of a licence granted under this Part authorizing him so to do and unless he complies with the conditions and restrictions specified in that licence or required by the regulations.

Penalty: For the first offence a fine of not more than \$1 500; and for a second or subsequent offence, a fine of not more than \$15 000.

(2) An application for a licence to do any thing that would otherwise constitute an offence against this section shall be made to the Director in the prescribed manner.

(3) On being satisfied that any fish farming or other operations will be conducted in conformity with the provisions of this Part and the regulations the Director may grant to any person a licence to do any thing that would otherwise constitute an offence against this section, and may specify in that licence the conditions and restrictions subject to which it is to have effect.

(4) Notwithstanding the provisions of this section to the contrary, a person (not being a person who has been convicted on more than one occasion for an offence against section 29 or this Part) who lawfully obtains, keeps, maintains and disposes of any fish or aquatic organism for his own personal use or pleasure and not for sale, gain or reward shall be deemed not to be conducting a fish farm.

[Section 39C: See note under Part heading. S. 39C amended by No. 60 of 1979 s. 16.]

Sale permits

39D. (1) The holder of a licence granted under the provisions of this Part shall not sell any fish of any kind or species mentioned in the Schedule to section 29 except with the prior written permission of the Director.

(2) Any permission given pursuant to subsection (1) may specify—

- (a) the name and address of the person to whom the sale may be made;
- (b) the date, time, means and method of delivery or consignment;
- (c) the number, size, weight and species of the fish involved; and
- (d) such other details as may be prescribed or as the Director may require.

[Section 39D: See note under Part heading.]

PART VI—ENFORCEMENT.

[Heading inserted by No. 72 of 1974 s. 44.]

Power to arrest offenders

40. Any inspector may, with or without warrant, arrest any person who the inspector has reason to believe has committed an offence against any of the provisions of this Act or the regulations, and any such person who escapes or attempts to escape from an inspector before or after arrest shall be guilty of an offence against this Act.

[Section 40^a amended by No. 30 of 1975 s. 9.]

[41. Section 41 repealed by No. 30 of 1975 s. 10.]

Search for and seizure of fish

42. All fish of which the taking or possession is prohibited by this Act or the regulations may be searched for, seized, and forfeited by any inspector or by any person holding the written authority of any justice, or any search warrant under the hand and seal of any justice, or by any person authorized by any regulation.

[Section 42^a amended by No. 35 of 1940 s. 14.]

Burden of showing that fish were not caught for sale to be on accused

43^a. In any prosecution for an offence against this Act or the regulations in which it is material to show that the accused person was engaged in catching fish for sale, proof that such person in fact caught fish shall be *prima facie* evidence that such person caught the fish for sale, and the burden of showing that the fish were not caught for sale shall rest on the accused person.

Burden of proof where label attached to receptacle containing fish

43A. When in any prosecution for an offence against this Act or the regulations it is material to show that the person charged delivered or consigned fish, proof that at the time of the delivery or consignment of the fish there was attached to the bag, basket, box or other receptacle containing such fish a label bearing the name of that person shall be *prima facie* evidence that he delivered or consigned such fish, and the burden of showing that such fish were not delivered or consigned by him shall rest on the person charged.

[Section 43A inserted by No. 20 of 1961 s. 9.]

Assaulting, etc., inspectors and others in execution of their duty

44. Any person who shall assault, resist, or obstruct or encourage any other person to assault, resist, or obstruct, or shall use abusive language to any inspector, or other person, whomsoever, in the execution of his duty or authority under this Act, commits an offence and is liable on conviction to a penalty of not less than \$100 nor more than \$1 000, or to imprisonment for a term not exceeding 6 months: And the adjudicating justices may, in addition to any such penalty, order a sum of money sufficient to cover any damage or injury sustained by the person so assaulted, resisted, or obstructed to be paid by the offender to such person, which sum shall be recoverable in the same manner as a penalty under this Act may be recovered.

[Section 44^a amended by No. 35 of 1940 s. 15; No. 50 of 1965 s. 36; No. 113 of 1965 s. 8; No. 60 of 1979 s. 16.]

Person charged with possession of fish liable to penalty

45. Any person who, on being charged before a justice with having fish in his possession which may reasonably be suspected of being taken or obtained 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 \$50 and not exceeding \$750.

[Section 45^a amended by No. 113 of 1965 s. 8; No. 72 of 1974 s. 45; No. 60 of 1979 s. 16.]

Person found on waters with prohibited net or implement liable to penalty

46. (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 9 or 10 before the coming into operation of the *Fisheries Act Amendment Act 1965*¹, or by any notice published in the *Government Gazette* under either of those sections after the coming into operation of that Act, commits an offence.

Penalty: Where the waters are not included in a limited entry fishery, a fine of not more than \$750. Where the waters are included in a limited entry fishery, a fine of not more than \$2 500.

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

- (a) that a licence 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 in such waters solely for the purpose of being so taken.

[Section 46^a amended by No. 50 of 1965 s. 37; No. 113 of 1965 s. 8; No. 72 of 1974 s. 46; No. 60 of 1979 s. 16.]

General penalty

47. (1) Every person who contravenes or fails to comply with any provision of this Act commits an offence against this Act.

(1a) Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable to a penalty not exceeding \$750.

(2) Wherever it is provided by this Act that a person who commits an offence is liable to a penalty not less than an amount specified, that amount so specified is a minimum penalty irreducible in mitigation notwithstanding the provisions of any Act.

[Section 47^a amended by No. 50 of 1965 s. 38; No. 113 of 1965 s. 8; No. 72 of 1974 s. 47; No. 60 of 1979 s. 12.]

Engines, nets, etc., of offenders may be forfeited

48. (1) All engines, lines, nets, rock lobster pots 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 Her Majesty.

(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.

(3) A boat may be seized or detained by any person authorized under this Act so to do, but no boat shall be forfeited under this Act otherwise than—

(a) pursuant to an order of the court consequential to the conviction of a person for an offence against this Act; or

(b) in the circumstances referred to in section 49.

[Section 48^a substituted by No. 35 of 1940 s. 17; amended by No. 63 of 1962 s. 9; No. 61 of 1969 s. 7; No. 30 of 1975 s. 11.]

Protection of inspectors

48A. No inspector shall be liable for anything done or seizure made under this Act for which there shall have been reasonable cause.

[Section 48A inserted by No. 22 of 1946 s. 6.]

Inspector may seize boats, nets, lines, etc., in certain circumstances

49. (1) When any boat, net, rock lobster pot, line, engine, implement, appliance or other article for taking fish shall be found by an 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, rock lobster pot, 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 Her Majesty, and the same shall be forfeited accordingly.

(1a) Notwithstanding the provisions of subsection (1), any inspector may cut the floats from or destroy any rock lobster pot found in closed waters or any rock lobster pot not marked as prescribed or not provided with a device or gap as required by this Act that is found in any waters.

(1b) Any inspector may destroy any crate or box that is used for holding rock lobsters if undersize rock lobsters are found therein to a number in excess of one-twentieth of the total number of rock lobsters in that crate or box.

(2) The expression "closed waters" means any waters as to which any proclamation under sections 9 or 10 made before the coming into operation of the *Fisheries Act Amendment Act 1965*¹, or any notice published in the *Government Gazette* under either of those sections after the coming into operation of that Act, is in force.

(3) Any person making a claim to ownership of any boat, net, rock lobster pot, 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.

[Section 49^a substituted by No. 35 of 1940 s. 18; amended by No. 63 of 1962 s. 10; No. 50 of 1965 s. 39; No. 61 of 1969 s. 7; No. 60 of 1979 s. 13.]

Inspector may seize plant used for processing undersized rock lobsters

49A. (1) When an inspector finds any plant or appliance being used for cooking or processing undersized rock lobsters or rock lobster tails of a weight less than the weight prescribed, or which he has reason to believe has been or is intended to be so used, the inspector may seize that plant or appliance and cause it to be taken before a justice who, upon being satisfied that there are reasonable grounds for believing that the plant or appliance so seized was being, or had been or was intended to be, so used, order the same to be forfeited to Her Majesty and the same shall be forfeited accordingly.

(2) Any person claiming to be the owner of any plant or appliance seized pursuant to subsection (1) may appear before the justice before whom the plant or appliance has been taken and make such representations as he may think fit.

[Section 49A inserted by No. 63 of 1962 s. 11; amended by No. 61 of 1969 s. 7.]

Inspectors powers generally

49B. (1) A person shall not—

- (a) fail to facilitate by all reasonable means the boarding of a boat by any inspector;
- (b) refuse to allow a search to be made which is authorized by or under this Act;
- (c) refuse or neglect to comply with a requirement lawfully made by any inspector;
- (d) refuse to give information when lawfully required by an inspector or give false or misleading information to any inspector;
- (e) impersonate an inspector;
- (f) give false or misleading information in any application under this Act.

Penalty: \$1 500.

(2) In addition to the powers bestowed on inspectors by other sections of this Act and the regulations any inspector may—

- (a) examine any equipment in any place, being equipment that he has reason to believe has been used, is being used, or is intended to be used for fishing;
- (b) require the master or other person in charge of a boat which the officer has reason to believe has been used, is being used, or is intended to be used in contravention of this Act or of the *Fisheries Act 1952*, of the Commonwealth—
 - (i) to bring the boat to a place in the State specified by the officer and to remain in control of the boat at that place until an officer permits him to depart from that place; or
 - (ii) not to proceed to sea unless accompanied by the inspector;
- (c) bring a boat which the officer has reason to believe has been used, is being used, or is intended to be used in contravention of this Act or of the *Fisheries Act 1952*, of the Commonwealth to a place in the State and remain in control of that boat pending the taking and determination of proceedings in respect of that contravention;

- (d) require the master or other person in charge of a boat required to be licensed under this Act or the *Fisheries Act 1952*, of the Commonwealth to produce the licence for the boat, and may take copies of or extracts from that licence;
- (e) require the master or other person in charge of a boat required to be licensed under this Act or the *Fisheries Act 1952*, of the Commonwealth to give information concerning the boat and her crew and any person on board the boat;
- (f) require a person who is on board a boat required to be licensed under this Act or the *Fisheries Act 1952*, of the Commonwealth or is engaged in fishing, or whom the inspector reasonably suspects of having committed an offence against this Act, or the *Fisheries Act 1952*, of the Commonwealth to state his name and place of abode; and
- (g) require a person engaged in fishing to state whether he is the holder of a licence under this Act or the *Fisheries Act 1952*, of the Commonwealth and to produce any such licence.

(3) For the purposes of this Act, and in addition to the particular powers more specifically referred to in this Act and the regulations, every inspector appointed under this Act, including any police officer exercising the powers of any inspector pursuant to section 5 (3), has and may exercise the power—

- (a) to enter and search any premises or place at any time without warrant;
- (b) to stop, detain, inspect and search any vehicle, boat or aircraft;
- (c) to inspect any fish, or any net, rock lobster pot, appliance or equipment capable of being used for fishing; and
- (d) to seize, take, secure or cause to be removed any fish which he has reason to believe has been taken, or any boat or other thing which he has reason to believe has been, is, or is intended to be or about to be used, in breach of this Act or the regulations.

(4) Where any boat, plant, fish, equipment or other thing is seized under the provisions of this Act it shall be taken before a justice where that is practicable, but where a justice determines that it is not practicable he may certify that the requirements of this Act have been sufficiently complied with if he is satisfied that although the boat, plant, fish, equipment or thing seized has not been taken before him, he has nevertheless obtained sufficient information concerning the same for the purposes of this Act.

[Section 49B inserted by No. 72 of 1974 s. 48; amended by No. 30 of 1975 s. 12; No. 60 of 1979 s. 16.]

Detained equipment not to be removed

49C. A person shall not, without lawful excuse, remove or interfere with—

- (a) any boat, plant, fish, equipment or other thing that is being detained by an inspector or the Director after having been seized by an inspector under this Act; or
- (b) any boat that is under the control of an inspector pursuant to section 49B (2) (c).

[Section 49C inserted by No. 70 of 1982 s. 14.]

Director may sell boats, nets, lines, etc.

50. The Director may, subject to the approval of the Minister, and in the manner prescribed by regulation, sell or dispose of all boats, nets, rock lobster pots, lines, engines, implements, appliances, and other articles for taking fish and all plant and appliances for cooking or processing undersized rock lobsters or rock lobster tails of a weight less than the weight prescribed, and all fish and receptacles forfeited in accordance with the provisions of this Act.

[Section 50^a amended by No. 63 of 1962 s. 12; No. 50 of 1965 s. 40; No. 38 of 1966 s. 15; No. 61 of 1969 s. 7.]

Recovering of penalties and forfeitures

51^a. All penalties and forfeitures imposed or incurred by or under this Act, or by or under any regulation, may be recovered and enforced summarily before any 2 Justices of the Peace in petty sessions.

Persons who may take proceedings

52. (1) All proceedings in respect of any such penalties or forfeitures may be taken by and in the name of the Director or any inspector of fisheries, or by and in the name of any person authorized in that behalf by the Director.

(2) In proceedings of the kind referred to in subsection (1), proof is not required, in the absence of proof to the contrary, of the due appointment of the Director or any inspector of fisheries.

[Section 52^a amended by No. 50 of 1965 s. 41; No. 73 of 1981 s. 5.]

Time for commencing proceedings

52A. A complaint for an offence against this Act may be made at any time within 2 years from the time when the matter of complaint arose.

[Section 52A inserted by No. 70 of 1982 s. 15.]

Exemptions to be proved by person pleading same

53. In all cases where the defendant or person charged with any offence under this Act or the regulations shall plead any exemption therein contained or that he had the permission of the Director or of the Minister given in the course of the administration of this Act the proof thereof shall be upon such defendant or person charged.

[*Section 53⁴ amended by No. 72 of 1974 s. 49.*]

Imprisonment in lieu of pecuniary penalty

54. The justices before whom any proceedings may be taken in respect of any offence against the provisions of this Act, or any regulation, for which a pecuniary penalty only is imposed, may impose in lieu of any such pecuniary penalty a term of imprisonment not exceeding such term as by virtue of section 167 of the *Justices Act 1902*, might have been inserted in a warrant of commitment relating to a default of payment of that amount.

[*Section 54⁴ amended by No. 72 of 1974 s. 50.*]

Licence may be suspended or cancelled in certain cases

55. Where a person holding a licence under this Act has been convicted of an offence against this Act, he shall be liable, in addition to any other punishment, to the suspension or cancellation of his licence at the discretion of the Minister.

[*Section 55⁴ amended by No. 9 of 1913 s. 9.*]

Automatic cancellation of licences relating to certain boats

55A. (1) If on 3 or more occasions in any period of 10 years a boat in respect of which a licence has been issued under section 17 has been used for or in connection with the commission of offences against this Act in respect of which offences convictions have been obtained, the licence so issued in respect of that boat and in force at the time of the third or subsequent such conviction is by virtue of this subsection and without any further authority cancelled, whether that licence is held by any of the persons convicted or by some other person.

(2) If a boat in respect of which a licence has been issued under section 17 and which has been used for or in connection with the commission of an offence against this Act, in respect of which offence a conviction has been obtained, is replaced by another boat, that other boat shall be deemed for the purposes of subsection (1) to be the boat which has been so used and the boat which is so replaced shall be deemed not to have been so used.

[*Section 55A substituted by No. 60 of 1979 s. 14.*]

Power to prohibit offenders from being on boats

55B. (1) In this section "fishing boat" means a boat in respect of which a boat licence is in force under this Act.

(2) Where a person is convicted of an offence against this Act the Minister may, by notice in writing served on the person, prohibit the person from being on any fishing boat, or on a fishing boat specified in the notice, or on a fishing boat of a class specified in the notice.

(3) A notice served on a person under this section—

- (a) shall have effect generally or at such times or in such circumstances as are specified in the notice;
- (b) subject to paragraph (c), shall remain in force for such period as is specified in the notice;
- (c) may be revoked or varied at any time by the Minister by notice in writing served on the person.

(4) A person who is on a fishing boat in contravention of a notice served on him under this section commits an offence against this Act.

(5) The service of a notice on a person under this section shall be in addition to any other punishment to which he is liable and the provisions of this section do not affect the operation of sections 55 and 55A.

[Section 55B inserted by No. 70 of 1982 s. 16.]

Extent of application of Act to Aborigines

56. (1) Subject to the provisions of this section and to the restrictions imposed by or under sections 9, 10, 23, 23A, 24 and 26 but notwithstanding anything contained in any other provisions of this Act, a person of Aboriginal descent may take in any waters and by any means sufficient fish for food for himself and his family, but not for sale.

(2) The Governor may, if he is satisfied that—

- (a) the power to take fish conferred by subsection (1) is being abused; or
- (b) the population of any species of fish which is being taken under the power to take fish conferred by subsection (1) is becoming or is likely to become excessively depleted,

by regulation suspend or restrict the operation of that subsection in such manner and for such period and in such part or parts of the State as he thinks fit.

(3) In subsection (1)—

"person of Aboriginal descent" means any person living in Western Australia who—

- (a) is wholly or partly descended from the original inhabitants of Australia; and

(b) claims to be an Aboriginal and is accepted as such in the community in which he lives;

“sale”, without derogating from the normal meaning of the expression, includes sale by retail or wholesale, barter, exchange, supply for profit, offer or expose for sale, send forward or deliver for sale or cause or suffer or permit to be sold.

[Section 56⁴ substituted by No. 60 of 1979 s. 15.]

Annual report

57. Notwithstanding the provisions of the *Financial Administration and Audit Act 1985*, the Director shall, as soon as possible after 31 December in every year, report to the Minister as to the state of the fisheries of the State, and such report shall be laid before both Houses of Parliament.

[Section 57⁴ amended by No. 50 of 1965 s. 43; No. 98 of 1985 Schedule 1.]

Incorporation of ss. of Schedule 2 to Interpretation Act

58⁴ The sections lettered G and H of the *Interpretation Act 1898*, shall be incorporated with this Act.

FIRST SCHEDULE

[First Schedule omitted under Reprints Act 1984 s. 7 (4) (f).]

SECOND SCHEDULE

(a) FISH, MARINE OR FLUVIO-MARINE SPECIES.

Common Name	Scientific name	Length (cm)
Bream (or Black bream)	<i>Acanthopagrus butcheri</i>	25
Bream, Pig-faced (or North-West snapper)	<i>Lethrinus spp.</i>	28
Bream, Yellow-fin	<i>Acanthopagrus latus</i>	25
Cobbler	<i>Cnidoglanis macrocephalus</i>	23
Flathead, Bar-tailed	<i>Platycephalus endrachtensis</i>	30
Flathead, Blue-spotted (or sand)	<i>Platycephalus speculator</i>	30
Flathead, Long-spined (or sand)	<i>Platycephalus longispinus</i>	30
Flathead, Marbled	<i>Platycephalus marmoratus</i>	30
Flounder	<i>Pseudorhombus jenynsii</i>	23
Garfish	Family <i>Hemirhamphidae</i>	23
Groper, Baldchin	<i>Choerodon rubescens</i>	40
Groper, Blue	<i>Achoerodus gouldii</i>	40
Herring, Australian (or Ruff) ..	<i>Arripis georgianus</i>	18
Jewfish, Westralian	<i>Glaucosoma hebraicum</i>	50
King snapper/Bight, redfish red snapper	<i>Trachichthodes gerrardi</i>	23
Leather jacket	Family <i>Monacanthidae</i>	25
Mackerel, Broad-barred Spanish (or grey) Spanish ..	<i>Scomberomorus semi fasciatus</i>	76
Mackerel, Common	<i>Scomber australasicus</i>	15
Mackerel, Narrow-barred Spanish	<i>Scomberomorus commerson</i>	76

SECOND SCHEDULE

(a) FISH, MARINE OR FLUVIO-MARINE SPECIES.

Common Name	Scientific name	Length (cm)
Mackerel, Spotted Spanish	<i>Scomberomorus munroi</i>	50
Mackerel Wahoo.....	<i>Acanthocybium solandri</i>	76
Morwong (or Queenfish).....	<i>Nemadactylus valenciennesi</i>	30
Mullet, Sea	<i>Mugil cephalus</i>	24
Mullet, Yellow-eye.....	<i>Aldrichetta forsteri</i>	23
Mulloway (or river kingfish)...	<i>Argyrosomus hololepidotus</i>	33
Nannygai	<i>Centroberyx affinis</i>	23
Pike, Long-fin.....	<i>Dinolestes lewini</i>	33
Red Emperor (or government bream).....	<i>Lutjanus sebae</i>	28
Salmon, Australian.....	<i>Arripis trutta</i>	30
Samson fish (or sea kingfish) .	<i>Seriola hippos</i>	60
Snapper	* <i>Chrysophrys unicolor</i>	38
Snapper (south)	* <i>Chrysophrys</i> sp.	28
Snook	<i>Sphyraena novaehollandiae</i>	28
Sole	Family Soleidae and Cynoglossidae	20
Sweep.....	<i>Scorpius georgianus</i>	23
Tailor	<i>Pomatomus saltator</i>	25
Tarwhine (or silver bream)....	<i>Rhabdosargus sarba</i>	23
Trevalley, Silver (or skipjack)	<i>Pseudocaranx spp.</i>	20
Whiting, Spotted or King George.....	<i>Sillaginodes punctatus</i>	25
Whiting, Transparent (or school whiting).....	<i>Sillago bassensis</i>	22
Whiting, Western sand or silver.....	<i>Sillago schomburgkii</i>	22

*The genus *Chrysophrys* is under review.

(b) FISH, FRESHWATER SPECIES.

Trout, Brown	<i>Salmo trutta</i>	30
Trout, Rainbow	<i>Salmo gairdneri</i>	30

(c) CRUSTACEANS.

Crabs, Blue manna	<i>Portunus pelagicus</i>	127
Crabs, Brown mud.....	<i>Scylla serrata</i>	120
Crabs, Green mud.....	<i>Scylla paramamosain</i>	150
Marron.....	<i>Cherax tenuimanus</i>	76
Prawns, School	<i>Metapenaeus dalli</i>	50
Prawns, Western king	<i>Penaeus latisulcatus</i>	76
Rock lobster, Southern	<i>Jasus novaehollandiae</i>	98.5
Rock lobster, Western.....	<i>Panulirus cygnus</i>	76

(ca) MOLLUSCS.

Abalone, Roe's	<i>Haliotis roei</i>	60
Abalone, Brown Lipped	<i>Halioties conicopora</i>	140
Abalone, Green Lipped	<i>Haliotis laevigata</i>	140
Trochus Shell.....	<i>trochus</i>	65

(d) METHODS OF MEASUREMENT.

- (i) Cobbler are measured in a direct line from the base of the anterior edge of the caudodorsal fin to the tip of the tail.
- (ii) Crabs are measured from tip to tip of the posterior carapace spines.
- (iii) Garfish are measured from the tip of the upper jaw to the end of the upper half of the tail.
- (iv) Marron are measured from the tip of the rostrum to the posterior margin of the carapace along the mid-dorsal line.
- (v) Prawns are measured along the body from the eye to the tip of the tail.
- (vi) Southern Rock Lobster are measured from the anterior surface of the median suture of the frontal tubercle to the mid point of the posterior edge of the dorsal region of the carapace.
- (vii) Western Rock Lobster are measured along the mid-dorsal line from the anterior edge of the pronounced ridge which joins the front edges of the rostral horns immediately posterior to the eyestalks, to the posterior margin of the carapace.
- (viii) Abalone are measured from edge to edge of the shell across the longest diameter.
- (viii) Trochus Shell are measured across the base from edge to edge at the longest diameter.
- (viii) Tuna are measured from the point of the snout to the caudal fork in the tail.
- (viii) All other fish are measured from the point of the snout to the end of the tail.

[*Second Schedule*⁷ substituted in Gazette 22 October 1975 pp. 3931-32; erratum in Gazette 24 October 1975 p. 3953; amended in Gazettes 27 January 1978 p. 258; 21 November 1980 p. 3913; 18 February 1983 p. 526; 15 April 1983 p. 1186; 21 October 1983 p. 4274; 23 March 1984 p. 746; 25 May 1984 p. 1392; 28 September 1984 p. 3160; 27 September 1985 p. 3813; 18 April 1986 p. 1437.]

NOTES

¹ This reprint is a compilation as at 15 July 1986 of the *Fisheries Act 1905*⁸ and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and year	Assent	Commencement	Miscellaneous
<i>Fisheries Act 1905</i>	18 of 1905	23 December 1905	1 January 1906 (See s. 1)	
<i>Fisheries Act Amendment Act 1911</i>	24 of 1911	16 February 1911	16 February 1911	
<i>Fisheries Act Amendment Act 1913</i>	9 of 1913	8 November 1913	15 December 1913 (See Gazette 12 December 1913 p. 4807)	
<i>Fisheries Act Amendment Act 1921</i>	4 of 1921	30 September 1921	30 September 1921	
<i>Fisheries Act Amendment Act 1938</i>	27 of 1938	31 January 1939	31 January 1939	

Act	Number and year	Assent	Commencement	Miscellaneous
<i>Fisheries Act Amendment Act 1940</i>	35 of 1940	20 December 1940	20 December 1940	
<i>Fisheries Act Amendment Act 1946</i>	22 of 1946	14 January 1947	14 January 1947	
<i>Fisheries Act Amendment Act 1947</i>	39 of 1947	11 December 1947	11 December 1947	
<i>Fisheries Act Amendment (Continuance) Act 1948</i>	10 of 1948	11 November 1948	11 November 1948	
<i>Fisheries Act Amendment Act 1949</i>	48 of 1949	26 October 1949	26 October 1949	
<i>Fisheries Act Amendment Act 1951</i>	55 of 1951	2 January 1952	2 January 1952	
<i>Fisheries Act Amendment Act 1956</i>	64 of 1956	4 January 1957	4 January 1957	
<i>Fisheries Act Amendment Act 1960</i>	46 of 1960	15 November 1960	15 November 1960	
<i>Fisheries Act Amendment Act 1961</i>	20 of 1961	30 October 1961	30 October 1961	
<i>Fisheries Act Amendment Act 1962</i>	63 of 1962	30 November 1962	30 November 1962	
<i>Fisheries Act Amendment Act 1964</i>	63 of 1964	4 December 1964	4 December 1964	
<i>Fisheries Act Amendment Act 1965</i>	50 of 1965	9 November 1965	1 January 1966 (See <i>Gazette</i> 10 December 1965 p. 4134)	
<i>Fisheries Act Amendment Act (No. 2) 1965</i>	67 of 1965	25 November 1965	25 November 1965	
<i>Decimal Currency Act 1965</i>	113 of 1965	21 December 1965	Sections 4 to 9: 14 February 1966 (See s. 2 (2)); balance 21 December 1965	
<i>Fisheries Act Amendment Act 1966</i>	38 of 1966	31 October 1966	31 October 1966	
<i>Fisheries Act Amendment Act 1967</i>	73 of 1967	11 December 1967	1 March 1968 (See <i>Gazette</i> 6 March 1968 p. 574)	
<i>Fisheries Act Amendment Act 1969</i>	4 of 1969	21 April 1969	21 April 1969	
<i>Fisheries Act Amendment Act (No. 2) 1969</i>	61 of 1969	29 September 1969	29 September 1969	
<i>Fisheries Act Amendment Act 1971</i>	47 of 1971	10 December 1971	10 December 1971	
<i>Metric Conversion Act 1972 (as amended by Metric Conversion Amendment Act 1973)</i>	19 of 1973	6 June 1973	1 July 1973	
<i>Fisheries Act Amendment Act 1974</i>	72 of 1974	10 December 1974	7 February 1975 (See <i>Gazette</i> 7 February 1975 p. 440)	

Act	Number and year	Assent	Commencement	Miscellaneous
<i>Fisheries Act Amendment Act 1975</i>	30 of 1975	16 May 1975	16 May 1975	
<i>Fisheries Act Amendment Act 1979</i>	60 of 1979	12 November 1979	Sections 4, 5, 9 and 13: 3 October 1980 (See s. 2 (2) and <i>Gazette</i> 3 April 1980 p. 1043); balance 14 December 1979 (See <i>Gazette</i> 14 December 1979 p. 3865)	
<i>Fisheries Amendment Act 1981</i>	73 of 1981	30 October 1981	14 February 1983: (See s. 2)	
<i>Fisheries Amendment Act 1982</i>	70 of 1982	19 October 1982	Section 13 (a): 14 February 1983 (See s. 2 (3) ⁹); Section 3 (b), 4, 5, 6, 9 and 16: 11 January 1985 (See <i>Gazette</i> 11 January 1985 p. 176); balance: 19 October 1982	Section 7 (2) Saving
<i>Acts Amendment (Conservation and Land Management) Act 1984, Part VI</i>	112 of 1984	19 December 1984	22 March 1985 (See s. 2 and <i>Gazette</i> 15 March 1985 p. 931)	
<i>Acts Amendment and Repeal (Statutory Bodies) Act 1985, Part I</i>	57 of 1985	28 October 1985	25 November 1985	Section 9 Transitional
<i>Acts Amendment (Financial Administration and Audit) Act 1985, Schedule</i>	98 of 1985	4 December 1985	1 July 1986	

² Department name changed in accordance with *Reprints Act 1984* section 7 (3) (h).

³ Previously referred to the *Public Service Act 1904*.

⁴ In this reprint the renumbering of Parts, Divisions, sections etc., effected in the 1949 reprint (in Volume 2 of the Reprinted Acts of the Parliament of Western Australia) and subsequent reprints has been retained. References to the original numbering are contained in those reprints.

⁵ See Act No. 72 of 1974 s. 19.

⁶ Title changed by Act No. 8 of 1975 s. 5 and amended pursuant to *Reprints Act 1984* section 7 (3) (h).

⁷ Amendments to the Act were also effected by notices published in the *Government Gazettes* prior to 1974 see 1974 index of Statutes in force and on 16 August 1974.

⁸ Marginal notes in the *Fisheries Act 1905* referring to legislation of other jurisdictions have been omitted from this reprint.

⁹ Section 2 (3) of No. 70 of 1982 reads—

(3) If the *Fisheries Amendment Act 1981* has not come into operation on or before the day on which this Act is assented to by the Governor section 13 (a) of this Act shall come into operation on the day on which that Act comes into operation.