

## FISHERIES.

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No. 73 of 1981.

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AN ACT to amend the Fisheries Act 1905-1979 to enable arrangements with respect to the management of certain fisheries to be entered into between, and given effect to by, the Commonwealth and the State.

[Assented to 30 October 1981.]

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

1. (1) This Act may be cited as the *Fisheries Amendment Act 1981*.

Short title  
and  
citation.

(2) In this Act, the Fisheries Act 1905-1979 is referred to as the principal Act.

Reprinted as  
approved 15  
March 1976  
and amended  
by Act No. 60  
of 1979.

(3) The principal Act as amended by this Act may be cited as the Fisheries Act 1905-1980.

Commence-  
ment.

2. This Act shall come into operation on the date on which Part IVA of the Fisheries Act 1952 of the Parliament of the Commonwealth, as amended by subsequent Acts of that Parliament, comes into operation.

Amendment  
of section 3.

3. Section 3 of the principal Act is amended—

(a) in subsection (1),

(i) by inserting after the definition of “Boat license” the following definition—

“Commonwealth Act” means the Fisheries Act 1952 of the Parliament of the Commonwealth as amended from time to time; ;

(ii) by inserting after the definition of “Fixed engine” the following definition—

“foreign boat” has the same meaning as it has in the Commonwealth Act; ;

(iii) by deleting the definition of “Western Australian waters; and

(b) by inserting after subsection (2) the following subsection—

“ (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 of this Act and except for purposes prescribed by paragraph (d) of this subsection—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 of this Act—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. ” .

Insertion of  
Part IIA.

4. After Part II of the principal Act, the following Part is inserted—

“ PART IIA.—COMMONWEALTH-STATE  
MANAGEMENT OF FISHERIES.

Interpreta-  
tion.

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 of this Act as a fishery to which the arrangement applies;

“Joint Authority” means—

- (a) the Western Australian Fisheries Joint Authority established under subsection (1) of section 12D of the Commonwealth Act; and
- (b) any other Joint Authority established under subsection (6) of section 12D 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 of this Act, 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.

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.

Powers and  
functions  
of Minister.

(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.

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.

Judicial  
notice.

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 of this Act as are conferred on it by the law in accordance with which, pursuant to the arrangement, the fishery is to be managed.

## 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) of this section 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 to 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) of this section 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.

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.

Procedure  
of Joint  
Authorities.

(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.

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.

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, licenses, 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 license, endorsement, instrument or regulation does not have effect before the arrangement takes effect.

(4) Upon the termination of an arrangement, licenses, 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, licenses, 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 license, endorsement, instrument or regulation does not have effect before the termination of the arrangement takes effect.

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.

Application of this Act to fisheries in accordance with arrangements.

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.

Functions of Joint Authority.

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

Joint Authority to exercise certain powers instead of Minister etc.

(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 licenses) 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 authorised to exercise a power, were references to the Joint Authority.

(3) A license 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 license granted under this Act (including such a license granted by that Joint Authority or another Joint Authority) so as to extend the operation of the license 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 license ceases to have effect; and
- (b) the Joint Authority may suspend or cancel the endorsement as if it were a license granted by the Joint Authority.

(5) Subject to paragraphs (b) and (c) of subsection (1) of section 8N, 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 license in respect of a foreign boat or to endorse such a license.

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—

Application of certain provisions relating to offences.

- (a) as if a reference in those provisions to a license were a reference to a license, or an endorsement of a license, 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.

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

Presumption relating to certain statements.

- (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.

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—

Regulations and notices.

- (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 paragraphs (a) or (b) of subsection (1) of this section or the amendment of a regulation in the manner referred to in paragraph (c) of subsection (1) of this section.

(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 52  
amended.

5. Section 52 of the principal Act is amended by—

- (a) inserting after the section designation “52.” the subsection designation “(1)”; and

- (b) inserting after subsection (1) the following subsection—

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