

## FISHERIES.

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No. 72 of 1974.

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AN ACT to amend the Fisheries Act, 1905-1973.

[Assented to 10th December, 1974.]

**B**E 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 Act Amendment Act, 1974*. Short title and citation.

(2) In this Act the Fisheries Act, 1905-1973, is referred to as the principal Act. Reprinted as approved for reprint 15th May, 1972 and amended by Act No. 19 of 1973.

(3) The principal Act as amended by this Act may be cited as the Fisheries Act, 1905-1974.

Commence-  
ment.

2. This Act, or any provisions of this Act, shall come into operation on the date or dates fixed by proclamation in relation thereto.

Long title  
amended.

3. The long title to the principal Act is hereby repealed and re-enacted with amendments as follows—

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. .

Section 1  
amended.

4. Section 1 of the principal Act is amended by deleting the passage “, and shall come into operation on the first day of January, one thousand nine hundred and six”, in line two and line three.

Section 3  
amended.

5. Section 3 of the principal Act is amended—

(a) by deleting the interpretation of the term “Boat” and re-enacting it with amendments as follows—

“Boat” includes every vessel, boat, barge, floating platform or punt of any description whatsoever; ;

(b) by deleting the interpretation of the term “Rock lobster pot” and re-enacting it in the appropriate alphabetical sequence;

(c) by deleting the interpretation of the term “Rock lobster tail” and re-enacting it in the appropriate alphabetical sequence with amendments as follows—

“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; ;

- (d) by deleting the interpretation of the term "Director" and re-enacting it with amendments as follows—

"Director" means the person holding or acting in the office of Director of Fisheries; ;

- (e) by deleting the interpretation of the term "Inspector" and re-enacting it with amendments as follows—

"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 authorised under this Act to carry out the duties of an inspector of fisheries; ;

- (f) by deleting the interpretation of the term "Marine algal life";

- (g) as to the interpretation of the term "the Rock Lobster Committee"—

(i) by deleting the passage "five A", in line three, and substituting the passage "five B"; and

(ii) by deleting the interpretation as so amended and re-enacting it in its appropriate alphabetical sequence;

- (h) as to the interpretation of the term "the Department", by deleting the word "Fauna", in line three, and substituting the word "Wildlife";

- (i) as to the interpretation of the term "the General Committee", by deleting the passage "five A", in line three, and substituting the passage "five C";

- (j) by deleting the definition of the term "Western Australian Waters" and re-enacting it with amendments as follows—

"Western Australian waters" include the sea from high-water mark to three

nautical miles from low water-mark, and every tidal river, and every estuary and arm of the sea, and the waters of every river, stream, brook, creek, swamp, lake or lagoon, notwithstanding that the water may be impounded or that the land covered by the water is private land alienated by the Crown or land reserved for any purpose and vested in any person or authority. ; and

- (k) by inserting in the appropriate alphabetical sequence two new interpretations as follows—

“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;

“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; .

Section 5  
amended.

6. Section 5 of the principal Act is amended—

- (a) by deleting subsection (1) and substituting a new subsection as follows—

(1) There shall be an office, entitled Director of Fisheries, to which shall be appointed under the Public Service Act, 1904, 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. ;

- (b) as to subsection (1a), by deleting the figures “1965” and substituting the figures “1974”, in line two of that subsection;

- (c) as to subsection (1b), by deleting the passage “The Governor may appoint any person”, in line one of that subsection, and

substituting the passage "A suitable person shall be appointed under the Public Service Act, 1904,";

- (d) by inserting after subsection (1b) six new subsections as follows—

(1c) There shall be appointed under the Public Service Act, 1904, 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, 1904, 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 authorise 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 authorised 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.

Section 5A  
repealed.

7. Section 5A of the principal Act is hereby repealed.

Section 5B  
amended.

8. Section 5B of the principal Act is amended—

- (a) by deleting the words “The Rock Lobster Committee shall consist of either six members or seven members”, in line one and line two, and substituting the passage “There shall be a Committee, to be known as the Rock Lobster Industry Advisory Committee, which shall consist of either seven members or eight members”;
- (b) by deleting the word “two”, in line twelve, and substituting the word “three”; and
- (c) by deleting the word “seven”, in line fifteen, and substituting the word “eight”.

Section 5C  
amended.

9. Section 5C of the principal Act is amended by deleting the words “The General Committee”, in line one, and substituting the passage “There shall be a Committee, to be known as the General Fisheries Advisory Committee, which”.

10. Section 5D of the principal Act is amended— Section 5D amended.

- (a) by deleting subsection (1) and substituting a new subsection as follows—

(1) The provisions of this section have effect in relation to the Rock Lobster Committee and to the General Committee. ; and

- (b) by deleting subsection (1b) and substituting a new subsection as follows—

(1b) Subject to subsection (1a) and subsection (2) of this section, the term of tenure of office of a member of a Committee shall be five years but he shall be eligible for re-appointment on the expiration of his term of office. .

11. Section 5E of the principal Act is amended— Section 5E amended.

- (a) as to subsection (1), by deleting the words “each Committee constituted under section five A of this Act”, in line one and line two of that subsection, and substituting the words “the Rock Lobster Committee and of the General Committee”; and
- (b) as to subsection (2), by deleting the word “a”, in line one of that subsection, and substituting the word “either”.

12. Section 5F of the principal Act is amended— Section 5F amended.

- (a) by deleting the words “A Committee constituted under section five A of this Act is”, in line one and line two, and substituting the words “The Rock Lobster Committee and the General Committee are”; and
- (b) by deleting the word “it”, in line three, and substituting the words “either of those Committees”.

Section 6  
amended.

13. Section 6 of the principal Act is amended, as to subsection (1),—

- (a) in paragraph (a), by adding after the word “regulations”, being the last word in the paragraph, the passage “, 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) in paragraph (gb), by deleting the designation “(2a)”, in line two of that paragraph, and substituting the designation “(3)”;
- (c) by inserting, after paragraph (j), five new paragraphs as follows—
  - (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 twenty-six A of this Act;
  - (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;
- (d) by inserting, after paragraph (mk), four new paragraphs as follows—
- (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;

- (e) by inserting, after paragraph (n), two new paragraphs as follows—
- (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; ;
- (f) in paragraph (o), by deleting the passage “whatsoever;”, in line two of that paragraph, and substituting the passage “whatsoever.”; and
- (g) by deleting paragraph (p).

Section 9  
amended.

14. Section 9 of the principal Act is amended by deleting subsection (3).

Section 10  
repealed  
and re-en-  
acted.

15. Section 10 of the principal Act is repealed and re-enacted with amendments as follows—

Illegal de-  
vices, 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 authorised 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 authorised for scientific purposes pursuant to section twenty of this Act.

(2) A notice under subsection (1) of this section 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.

Section 11  
amended.

16. Section 11 of the principal Act is amended by deleting the passage “Every notice published in the *Government Gazette* under section nine or section ten of this Act—”, in line one to line three, and substituting the passage “Any proclamation made by the Governor under the provisions of section nine, section ten, or section nineteen of this Act as those provisions existed immediately prior to the coming into operation of the Fisheries Act Amendment Act, 1965, or made by the Governor under the provisions of section twelve A of this Act as those provisions existed prior to the coming into operation of the Fisheries Act Amendment Act, 1969, 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—”.

17. Section 12A of the principal Act is amended— Section 12A amended.

- (a) as to subsection (1), by deleting the passage “this section, or the Minister”, in line three and line four, and substituting the passage “the provisions of this section as those provisions existed immediately prior to the coming into operation of the Fisheries Act Amendment Act, 1969, declared, or the Minister,”;
- (b) as to subsection (2), by deleting the passage “The Governor, on the recommendation of the Minister,” in line one and line two, and substituting the words “The Minister”; and
- (c) by deleting subsection (4).

18. Section 18 of the principal Act is amended— Section 18 amended.

- (a) as to subsection (2), by inserting after paragraph (a) five new paragraphs as follows—
  - (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 ten of this Act 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; ; and

(b) as to subsection (3),—

(i) by inserting after the word “product”, in line seven of that subsection, the words “or aquatic organism”; and

(ii) by deleting the words “were caught”, in line nine, and substituting the words “or aquatic organism were taken”.

Section 19  
repealed.

19. Section 19 of the principal Act is hereby repealed.

Section 19A  
repealed.

20. Section 19A of the principal Act is hereby repealed.

Section 20  
amended.

21. Section 20 of the principal Act is amended by deleting the word “nineteen”, in line one, and substituting the word “ten”.

Section 21  
amended.

22. Section 21 of the principal Act is amended—

(a) as to subsection (1), by deleting the passage “by proclamation, or as the case may be, by notice, under section nineteen of”, in line four and line five of that subsection, and substituting the passage “, whether by proclamation or by notice under”; and

(b) as to subsection (3), by deleting the words “specified in the proclamation issued under section nineteen”, in line two and line three of that subsection, and substituting the passage “specified in a subsisting proclamation or notice issued under the provisions of the former section nineteen of this Act, now repealed, or under section ten”.

23. Section 24A of the principal Act is amended by adding, after subsection (3), three new subsections as follows—

Section 24A  
amended.

(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) of this section, 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 three months so as to enable the defendant to recover the amount of the fine and costs from the employer or principal.

24. Section 24C of the principal Act is amended—

Section 24C  
amended.

- (a) by inserting after the section designation "24C." the subsection designation "(1)";
- (b) by deleting the word "A", in line one, and substituting the passage "Subject to subsection (2) of this section, a";
- (c) by deleting the words "not less than two hundred dollars nor more than four hundred", in line eight and line nine, and substituting the words "two thousand"; and

(d) by adding a new subsection as follows—

(2) The Minister may, by notice published in the *Government Gazette*, declare that the utilisation 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) of this section, whether or not that portion is less than the prescribed weight, and effect shall be given to any such declaration.

Section 24E  
added.

25. The principal Act is amended by adding after section 24D a new section as follows—

Mutilation  
of fish.

24E. (1) A person shall not mutilate any fish mentioned in the Second Schedule to this Act 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 authorised 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) of this section 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 five hundred dollars; and
  - (ii) for a second or subsequent offence, a fine of not more than one thousand dollars; and
- (b) if the fish involved in the offence are not rock lobsters—
  - (i) for the first offence, a fine of not more than one dollar for each fish up to a maximum of two hundred dollars;
  - (ii) for the second or any subsequent offence, a fine of not more than ten dollars for each fish up to a maximum of five hundred dollars.

26. The principal Act is amended by adding after section 26 a new section as follows—

Section 26A added.

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.

Orders prohibiting pollution.

(2) Where a person is served with an order under subsection (1) of this section, he shall forthwith cease, and shall not commence or recommence, the activity so prohibited notwithstanding that he may be authorised to under-

take 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 Environmental Protection and the Minister shall have regard to any recommendations made to him by the Director of Environmental Protection.

(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. .

Section 29  
amended.

27. Section 29 of the principal Act is amended by repealing subsection (1) and re-enacting it with amendments as follows—

- (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 authorised so to do by a license in respect of fish farming issued pursuant to Part V of this Act 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 ten dollars for each fish; and

- (ii) for a second or subsequent offence, to a fine of not more than fifty dollars for each fish. .

28. The principal Act is amended by adding after section 29, a new section as follows—

Section 30  
added.

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—

Aquatic  
reserves.

- (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.

(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 two 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.

"This Act"  
includes  
regulations.  
cf. Act No.  
30 of 1918.

(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.

29. The principal Act is amended by adding, after section 29, a new section to stand as section 31, as follows—

Section 31  
added.

31. Where any land or any part of Western Australian waters is reserved to Her Majesty under section thirty of this Act, 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.

Classifica-  
tion of  
reserves.

30. The principal Act is amended by adding, after section 29, a new section to stand as section 32, as follows—

Section 32  
added.

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.

Limited  
entry  
fisheries.

(2) A notice under subsection (1) of this section 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 licenses and professional fisherman's licenses which may be issued or endorsed so as to authorise the boat or person licensed to operate in relation to that fishery;
- (e) the procedure and form for issuing those licenses and endorsements;
- (f) the period for which such a license or endorsement shall be valid;
- (g) the number and type of fishing gear and fishing boats authorised to operate by such a license 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 authorised to engage in that fishery or in any specified operations in that fishery;
- (j) the names and registration numbers of boats so authorised; and
- (k) the method by which boats or persons authorised to operate in that limited entry fishery shall be replaced, and by which an authorisation may be transferred.

(3) A license or endorsement authorising 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 license 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 authorised 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) of this section, a person who is not authorised to do so by a license 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 license 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 one thousand dollars;
- (b) for any subsequent offence, a fine of not more than ten thousand dollars;
- (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 ten 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 three 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. .

31. Section 35C of the principal Act is repealed and re-enacted with amendments to stand as section 35C, section 35CA, and section 35CB, as follows—

Section 35C  
repealed and  
re-enacted.

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) of this section authorising him so to do.

Application  
for permit  
to construct.

(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 licenses granted under section thirty-five CA 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 authorising 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) of this section 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) of this section 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.

## 35CA. (1) Where—

Processor's  
licenses.

- (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 license, grant to that person a processor's license in respect of that establishment.

(2) A license granted under subsection (1) of this section 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 license is subject to the conditions that—

- (a) the holder of that license shall not purchase fish for processing from any person who is not—
  - (i) the holder of a professional fisherman's license; or
  - (ii) the holder of a processor's license,

granted pursuant to the provisions of this Act and the regulations;

- (b) the holder of that license shall not for gain or reward of any kind process any fish whatsoever except in a processing establishment licensed in accordance with this section.

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

Suspension  
of a  
license, re-  
newals, ex-  
tensions,  
and fees  
payable.

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

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

(4) An application for the renewal or extension of a processor's license 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 license, and every applicant for the renewal or extension of a processor's license 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 license the amount of which may be assessed, wholly or in part, by reference to the type, size, nature and locality of the processing establishment.

32. Section 35G of the principal Act is repealed. Section 35G repealed.
33. Section 35I of the principal Act is repealed. Section 35I repealed.
34. Section 35J of the principal Act is repealed and re-enacted with amendments as follows— Section 35J repealed and re-enacted.
- 35J. Where the fees payable in respect of any processor's license 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. Fees may be assessed.
35. Section 35K of the principal Act is amended by deleting the designation "(2b)", in line four of subsection (1a), and substituting the designation "(3)". Section 35K amended.
36. Section 35L of the principal Act is amended— Section 35L amended.
- (a) as to subsection (2)—
- (i) by adding after the word "Part", in line two of paragraph (a), the passage "or for the removal or transfer of such licenses, 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 licenses or authorisations issued in relation to any limited entry fishery";

(ii) by deleting paragraph (b) and substituting a new paragraph as follows—

(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) of this section; or

(ii) any boat forfeited under section thirty-two of this Act, 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; ;

and

(iii) by adding after the word “otherwise”, being the last word in the subsection, the passage “including any moneys received from any authority or person for any research, investigation, exploration, development, extension, service, management or conservation project or programme or other purpose approved by the Minister”; and

(b) as to subsection (3), by adding after the word “fisheries”, in line two of paragraph (b), the passage “, 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”.

37. Section 35M of the principal Act is amended by deleting the words “thirty-first day of December”, in line two of paragraph (b) of subsection (1), and substituting the words “thirtieth day of June”.

Section 35M amended.

38. Section 36 of the principal Act is amended by deleting subsection (2) thereof.

Section 36 amended.

39. The principal Act is amended by inserting after section 36, three new sections, to stand as section 36A, 36B and 36C respectively, as follows—

Sections 36A, 36B and 36C inserted.

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.

Noxious fish.

(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 one thousand dollars; and for a second or subsequent offence, a fine of not more than ten thousand dollars.

Recapture  
or eradica-  
tion.

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 authorised by the Director, as a result of any act or omission which constitutes an offence against this Part of this Act 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.

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) of this section or to any condition specified in relation to any license, permit or other authorisation under this Act commits an offence.

Section 37  
repealed.

40. Section 37 of the principal Act is repealed.



41. Section 38 of the principal Act is repealed and re-enacted with amendments as follows—

Section 38  
repealed and  
re-enacted.

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—

Restriction  
on taking of  
fish for  
certain  
purposes.

(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) of this section commits an offence.

42. The principal Act is amended by inserting after section 38 a new section to stand as section 38A as follows—

Section 38A  
added.

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 authorised trade name or names for that particular group of species or type of fish.

Naming of  
fish.

(2) Where an official common name is ascribed to any fish that name shall be taken also to be an authorised 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 authorised 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 authorised trade name has not been ascribed, under a name which is, or is likely to be confused with, the authorised trade name of another species of fish,

commits an offence.

43. The principal Act is amended by inserting after section 39 a new heading and four new sections to stand as Part V as follows—

Part V  
added.

#### PART V.—FISH FARMING.

39A. In this Part of this Act—

Interpreta-  
tion.

“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.

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 of this Act shall apply to that fish and the eggs of that fish.

Farm fish.

## 39C. (1) A person who—

Fish farms.

- (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 license granted under this Part of this Act authorising him so to do and unless he complies with the conditions and restrictions specified in that license or required by the regulations.

Penalty: For the first offence a fine of not more than one thousand dollars; and for a second or subsequent offence, a fine of not more than ten thousand dollars.

(2) An application for a license 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 of this Act and the regulations the Director may grant to any person a license to do any thing that would otherwise constitute an offence against this section, and may specify in that license 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 twenty-nine or this Part of this Act) 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.

Sale per-  
mits.

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

(2) Any permission given pursuant to subsection (1) of this section 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. .

44. The principal Act is amended by inserting, immediately before section 40, a new heading as follows—

New heading inserted.

PART VI.—ENFORCEMENT. .

45. Section 45 of the principal Act is amended—

Section 45 amended.

- (a) by inserting after the word “taken”, in line three, the words “or obtained”; and
- (b) by deleting the word “forty”, in line seven, and substituting the words “four hundred”.

46. Section 46 of the principal Act is amended by deleting the penalty provisions, in lines eleven and twelve, and substituting a new passage as follows—

Section 46 amended.

Penalty: Where the waters are not included in a limited entry fishery, a fine of not more than two hundred dollars. Where the waters are included in a limited entry fishery, a fine of not more than two thousand dollars. .

47. Section 47 of the principal Act is amended—

Section 47 amended.

- (a) by deleting the passage “committing any act hereinbefore declared to be an “offence under this Act,” or committing a breach”, in line one to line three, and substituting the words “who contravenes or fails to comply with any provision”; and
- (b) by deleting the word “forty”, in line seven, and substituting the words “five hundred”.

Section 49B  
added.

48. The principal Act is amended by adding after section 49A a new section to stand as section 49B as follows—

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 authorised 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: One thousand dollars.

(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 license for the boat, and may take copies of or extracts from that license;
- (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 license under this Act or the Fisheries Act 1952, of the Commonwealth and to produce any such license.

Section 53  
amended.

49. Section 53 of the principal Act is amended by inserting after the word "contained", in line four, the words "or that he had the permission of the Director or of the Minister given in the course of the administration of this Act".

Section 54  
amended.

50. Section 54 of the principal Act is amended by deleting the words "thirty days", being the last two words of the section, and substituting the passage "such term as by virtue of section one hundred and sixty-seven of the Justices Act, 1902, might have been inserted in a warrant of commitment relating to a default of payment of that amount".

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