

FISHERIES ORDINANCE 1949-1959.*

625
AMENDED
32/68.

18/66
44/67

An Ordinance to provide for the Regulation of Fisheries and for other purposes.

1. This Ordinance may be cited as the *Fisheries Ordinance* 1949-1959.*

Short title.
Short title
amended:
No. 17, 1938,
s. 4.

2. This Ordinance shall commence on a date to be fixed by the Administrator by notice in the *Gazette*.†

3.—(1.) The *Fisheries Ordinance* 1911 and the *Fisheries Ordinance* 1924 are repealed. Repeal.

(2.) The *Fisheries Act* 1904 of the State of South Australia shall cease to apply to the Territory.

(3.) Notwithstanding the provisions of this section, any appointment, proclamation, permission, notice or licence made, given or granted under the *Fisheries Ordinance* 1911 or under that Ordinance as subsequently amended, and in force at the date of commencement of this Ordinance, shall continue in force as if made, given or granted under this Ordinance.

4. In this Ordinance, unless the contrary intention appears—

Definitions.
Amended by
No. 2, 1958,
s. 3.

“boat” includes any barge, punt or vessel of any description used for any purpose on the sea or in navigation;

“device” means any contrivance or thing made, used or intended for taking fish;

See 44/67

* The *Fisheries Ordinance* 1949-1959 comprises the *Fisheries Ordinance* 1949 as amended. Particulars of the Principal Ordinance and of the amending Ordinances are set out in the following table:—

Ordinance.	Number and Year.	Date of Assent by Administrator.	Date of Commencement.
<i>Fisheries Ordinance</i> 1949	No. 11, 1949	8th November, 1949	1st August, 1958
<i>Fisheries Ordinance</i> 1950	No. 4, 1950	22nd August, 1950 ..	1st August, 1958
<i>Fisheries Ordinance</i> 1952	No. 33, 1952	5th September, 1952	1st August, 1958
<i>Fisheries Ordinance</i> 1958	No. 2, 1958	12th May, 1958 ..	(See Note below)
<i>Administrator's Council Ordinance</i> 1959	No. 22, 1959	7th July, 1959 ..	28th April, 1960

Note.—Section 2 of the *Fisheries Ordinance* 1958 reads as follows:—

“2. This Ordinance shall come into operation on the date on which the *Fisheries Ordinance* 1949 comes into operation.”

† The date fixed was 1st August, 1958—see table above.

- “fish” means all marine, estuarine and freshwater animal life, and includes *cetacea* (except whales), *crustacea* and oysters, and, where the context so permits, includes dead fish, but does not include pearl shell, trochus, bêche-de-mer or green snails;
- “fish-trap” includes any weir, line, net, implement, device or contrivance fixed to the soil or made stationary or partly stationary in any way or manner for the purpose of taking fish;
- “Inspector” means an Inspector of Fisheries appointed or holding office under this Ordinance;
- “licence” means a licence granted under this Ordinance;
- “take” means all means by which fish may be procured from the water and includes “attempt to take”;
- “use” includes “attempt to use” or “assist in the use of”;
- “waters” includes all ports, harbours, lakes, rivers, creeks, streams and lagoons in the Territory whether salt, fresh or brackish and also all reservoirs, dams, tanks, channels or works for water storage or distribution vested in or under the control of the Crown or any statutory authority and any part of the sea within a distance of three miles from any part of the coast of the Territory and any bay, estuary or other inlet of the sea, but not any water the property of any private individual.

See 44/67 .

Inspectors.

5. The Administrator may appoint such persons as he thinks fit to be Inspectors of Fisheries.

Ex officio Inspectors.

6. All members of the Police Force shall, *ex officio*, be Inspectors.

Powers of Inspectors.

7. An Inspector may—

- (a) at all reasonable times, enter any shop, building or place where any fish are, or where he suspects any fish to be, kept for sale or prepared for market, export or sale;
- (b) enter or board any boat;
- (c) enter upon any waters, and pass through or along the banks or borders of those waters, and examine all tributaries, sluices and watercourses communicating with those waters;
- (d) seize any boat or fish which he has reasonable ground to believe is forfeited or liable to forfeiture;

- (e) seize any boat containing any illegal device, or any boat which is being used for the purpose of taking fish contrary to the provisions of this Ordinance;
- (f) seize any fish which he has reasonable grounds for suspecting has been taken illegally; and
- (g) destroy any fish which is unfit for human consumption.

8. An Inspector may arrest without warrant any person offending against any of the provisions of this Ordinance who, upon being required so to do by an Inspector, refuses to give his name and address, or gives a false name or a false address.

Inspectors to apprehend certain offenders.

9.—(1.) An Inspector may, in his discretion, grant to a person making application in writing—

- (a) a fishing licence for a person;
- (b) a fishing licence for a boat; or
- (c) a fish-trap licence.

Licences.
Sub-section (1.) substituted by No. 33, 1952, s. 3; and No. 2, 1958, s. 4.

(2.) A licence granted under this section remains in force, unless sooner forfeited, until the thirtieth day of June next succeeding the date on which it is issued and no longer unless the licence is issued in the month of June in which case it remains in force until the thirtieth day of June in the year next succeeding the year in which it is issued and no longer.

Substituted by No. 2, 1958, s. 4.

(2A.) Where a Court convicts a person under this Ordinance the Court may, on application by an Inspector, order that any licence held by the person shall be forfeited.

Inserted by No. 2, 1958, s. 4.

(3.) Every person who takes, for the purpose of sale, any fish in or upon any waters shall, in the months of July and January, forward to the Administrator a true statement in writing showing the quantities of each species of fish taken during the preceding six months and the waters in which they were taken.

(4.) A licence shall not be issued to a person who is not a British subject unless the Administrator, after consultation with the Department of Immigration, approves of the issue of a licence to that person.

Substituted by No. 4, 1950, s. 3.

10. Except as otherwise provided in this Ordinance, a person shall not, unless he is the holder of a licence, take for sale any fish from any waters.

Persons taking fish for sale to be licensed.

11. Except as otherwise provided in this Ordinance, a person shall not use an unlicensed boat to take for sale any fish from any waters.

Boat used for taking fish to be licensed.

Rights under
licences.
Substituted by
No. 2, 1958,
s. 5.

12.—(1.) A fishing licence for a person authorizes the person specified in the licence to take fish, otherwise than by boat or fish-trap, for the purpose of trade.

(2.) A fishing licence for a boat authorizes the person specified in the licence to use the boat for taking fish for the purpose of trade.

(3.) Subject to this Ordinance and the regulations, a fish-trap licence authorizes the person specified in the licence to erect a fish-trap and to take fish for any purpose from that fish-trap.

Section 13
repealed by
No. 2, 1958,
s. 6.

13. * See 44/67. * * * *

Crew need not
be licensed.

44/67.

14. Where the owner or master of a boat has a licence and the boat is licensed and the licences are on board the boat, the members of the crew of the boat may, subject to the prescribed conditions, be employed for any purpose for which the boat is licensed.

Licences to
be produced
on demand.

44/67

15. The owner or master or person in charge of any boat shall, on demand by an Inspector, produce to the Inspector the licence for the boat and the licence of the owner or master of the boat.

Administrator
may close
waters.

Amended by
No. 2, 1958,
s. 7; and
No. 22, 1959,
s. 6 and First
Schedule.

44/67.

16. The Administrator in Council may, by notice published in the *Gazette*—

- (a) close, for such period as he thinks fit, any waters against fishing, against fishing for any particular variety of fish, or against using any device;
- (b) appoint a close season for any variety of fish;
- (c) declare any device illegal;
- (d) fix the minimum weight or size at which any particular variety of fish may be taken or sold; and
- (e) declare that no fish-trap may be erected, used or kept in any area specified in the notice.

Administrator
may remove
obstructions.

17.—(1.) Where, in any waters, any natural or artificial obstruction prevents the free passage of any fish, the Administrator, or any person thereto authorized by him in writing, may remove the obstruction and secure a free passage to the fish.

(2.) The Administrator, or any person authorized in accordance with the last preceding sub-section, shall not be liable to an action or other proceeding at the suit of any person for anything done in the exercise of or incidental to the exercise of the power conferred by the last preceding sub-section.

18 Where any person who is lawfully fishing accidentally takes fish, the taking of which is prohibited under this Ordinance, he shall not be liable to a penalty therefor provided that he immediately returns the fish to the water with the least possible injury.

Saving where fish taken accidentally.

19—(1.) Subject to section thirty of this Ordinance a person shall not erect, use or keep a fish-trap—

Fish-traps.
Sub-section (1.)
substituted by
No. 2, 1958,
s. 8.

(a) anywhere in the Northern Territory unless he is the holder of a fish-trap licence; or

(b) in any area specified in a notice published under the provisions of paragraph (e) of section sixteen of this Ordinance.

(2.) The Administrator may, by notice in writing, require any person who has erected, used or kept any fish-trap in contravention of the last preceding sub-section to remove the fish-trap and, in default of that person removing the fish-trap within fourteen days of the service of that notice on him, may cause the fish-trap to be removed and may recover the cost of such removal from that person by action in any Court of competent jurisdiction.

(3.) The exercise by the Administrator of a power under the last preceding sub-section does not relieve a person who contravenes sub-section (1.) of this section from liability to the punishment specified in section thirty-one of this Ordinance.

Added by
No. 2, 1958,
s. 8.

(4.) The regulations may prescribe matters for and in relation to the erection of fish-traps.

Added by
No. 2, 1958,
s. 8.

20 All boats, engines and other articles used, or in the possession of any person, and all fish taken, contrary to the provisions of this Ordinance, shall be forfeited to the King.

Forfeitures.

21—(1.) An Inspector may seize any boat, engine, fish or other article which is forfeited or which he has reasonable grounds to believe has been forfeited under the last preceding section.

Seizure of
forfeited
articles.

(2.) Where any boat has been seized as forfeited, the Inspector making the seizure shall, wherever possible, forthwith give notice in writing to the owner or master of the boat of the seizure and the reason for the seizure.

(3.) Any notice under this section may be served personally or by post.

22. No compensation shall be payable to any person for fish destroyed as unfit for human consumption.

No
compensation
for destroyed
fish.

Use of
explosives, &c.,
prohibited.

23.—(1.) A person shall not—

- (a) use any explosive substance for the purpose of taking or destroying fish;
- (b) use any poisonous or noxious substance or material in any waters for the purpose of taking or destroying fish;
- (c) take or have in his possession (without reasonable excuse proof whereof shall lie upon him) any fish which have been killed or stunned by the explosion of any substance or which have been stupefied or killed by any poisonous or noxious substance or material; or
- (d) have in a boat (without reasonable excuse proof whereof shall lie upon him) any explosive substance.

(2.) Where, immediately after an explosion in any waters, any person is found in possession of any explosive substance or is found in any boat containing any explosive substance, that person shall (in the absence of proof to the contrary) be deemed to have used an explosive substance for the purpose of taking or destroying fish.

Proceedings
for offences
and forfeitures.

24.—(1.) Proceedings for the conviction of any person accused of an offence against this Ordinance, or for the condemnation of any boat or thing declared to be forfeited by this Ordinance, may be instituted by complaint in any Court of Summary Jurisdiction:

Provided that, where the value of any boat seized as forfeited exceeds One hundred pounds, the proceedings for the condemnation thereof shall be instituted by action in the Supreme Court.

(2.) Where the owner of the boat or thing, the subject of the proceedings, is not known, the proceedings may be heard and determined after such notice in the *Gazette* as the Court sees fit to order.

Appeals to
Supreme
Court.

25. An appeal shall lie to the Supreme Court against any conviction or order dismissing any complaint or order condemning any boat or thing as forfeited made by any Court of Summary Jurisdiction in pursuance of this Ordinance.

Certain
averments
deemed proved.

26. In any proceedings under this Ordinance, the averment of the prosecutor or plaintiff contained in the complaint, declaration or claim that any boat was at any time an unlicensed boat as regards any particular purpose, or that any person was at any time not the holder of a licence for any particular purpose, shall be deemed to be proved in the absence of proof to the contrary.

27. Proceedings against any person for an offence against this Ordinance or for the condemnation of any boat or thing as forfeited shall be commenced within six months after the commission of the offence or the cause of forfeiture occurred. Time for commencing proceedings.

28.—(1.) The Administrator may, if he thinks fit, remit any forfeiture under this Ordinance, whether before or after condemnation, upon payment of such fine and penalty as he thinks fit to impose in lieu thereof. Remission of forfeitures.

(2.) The Administrator shall forthwith report to the Minister any remission made in pursuance of this section and the reasons for the remission.

29.—(1.) Any boat or thing (other than an illegal device) condemned as forfeited may be sold or disposed of as the Administrator sees fit to direct. Disposal of forfeitures.

(2.) Any illegal device condemned as forfeited shall be destroyed.

30. Nothing in this Ordinance shall affect the right of any person to take fish from any waters of which he is the owner or to remove from any artificial pond or enclosure any fish taken by him and placed in such pond or enclosure for keeping. Private water not affected.

31. Any person who contravenes or fails to comply with any provision of this Ordinance, of any regulation under this Ordinance, or of any notice published in the *Gazette* in pursuance of this Ordinance, shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding Fifty pounds. Offences.

32. The Administrator may make regulations, not inconsistent with this Ordinance, prescribing all matters and things required or permitted to be prescribed by this Ordinance, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance and, in particular, prescribing matters providing for and in relation to— Regulations.

- (a) the issue and cancellation of licences;
- (b) the fees to be paid for licences;
- (c) the regulation of the sale of fish; and
- (d) the encouragement of the fishing industry in the Territory.