



# **FISHERIES (MISCELLANEOUS) AMENDMENT ACT 1991**

**No. 76 of 1991**

## **SUMMARY OF PROVISIONS**

### **Section**

1. Short title
2. Commencement
3. Interpretation
4. Insertion of s. 14a
  - 14a. Application of Commonwealth law within limits of State in accordance with arrangements
5. Objectives
6. Substitution of s. 25
  25. Fisheries officers
7. Identity cards and their production
8. Powers of fisheries officers
9. Substitution of s. 30
  30. Protection from personal liability
10. Persons and boats engaged or used in fisheries to be licensed
11. Grant of licences or registration
12. Conditions of licences
13. Transfer of licences
14. Temporary prohibition of certain fishing activities
15. Offences with respect to sale, purchase or possession of fish
16. Regulations relating to fisheries and fishing
17. Substitution of s. 48
  48. Constitution of marine parks
  - 48a. Control and administration of marine parks
  - 48b. Plans of management of marine parks
  - 48c. Non-application of Planning Act 1982, etc.
  - 48d. Implementation of plans of management
  - 48e. Agreements as to conditions
  - 48f. Rights of prospecting and mining
  - 48g. Protection of aquatic habitat
  - 48h. Regulations
18. Substitution of s. 51
  51. Persons engaged in fish farming to be licensed
  - 51a. Regulations relating to fish farming, exotic fish and disease in fish
19. Fish processors required to be registered
20. Regulations relating to fish processing
21. Suspension or cancellation of authorities by courts
22. Review of decisions relating to authorities
23. Substitution of s. 61
  61. Surrender of authorities

- 
- 24. Director to keep register of authorities
  - 25. Additional penalty based on value of fish taken unlawfully
  - 26. Insertion of s. 66a
    - 66a. Confidentiality

**SCHEDULE**



ANNO QUADRAGESIMO

# ELIZABETHAE II REGINAE

A.D. 1991

\*\*\*\*\*

No. 76 of 1991

An Act to amend the Fisheries Act 1982.

[Assented to 12 December 1991]

The Parliament of South Australia enacts as follows:

## Short title

1. (1) This Act may be cited as the *Fisheries (Miscellaneous) Amendment Act 1991*.
- (2) The *Fisheries Act 1982* is referred to in this Act as "the principal Act".

## Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

## Interpretation

3. Section 5 of the principal Act is amended—

- (a) by inserting after the definition of "fish farming" in subsection (1) the following definition:

"fish farming licence" means a licence to engage in fish farming granted under Division III of Part IV;;

- (b) by inserting after the definition of "foreign boat" in subsection (1) the following definition:

"marine park" means any waters, or land and waters, constituted a marine park by proclamation under Division II of Part IV;;

- (c) by inserting in the definition of "take" in subsection (1) "(whether alive or dead)" after "fish" second occurring;

and

- (d) by striking out subsection (5) and substituting the following subsection:

(5) This Act does not apply in relation to any activity (other than fish farming, the taking of fish for the purpose of trade or business or the intro-

duction of exotic fish or fish disease) engaged in in relation to inland waters if those waters are surrounded by land that is in the ownership, possession or control of the same person (being a person other than the Crown or an instrumentality of the Crown).

#### **Insertion of s. 14a**

4. The following section is inserted after section 14 of the principal Act:

##### **Application of Commonwealth law within limits of State in accordance with arrangements**

14a. Where there is in force an arrangement that provides that a particular fishery is to be managed in accordance with the law of the Commonwealth, that law applies within the limits of the State as a law of the State.

#### **Objectives**

5. Section 20 of the principal Act is amended by striking out from paragraph (a) “and” and substituting “, preservation and fisheries”.

#### **Substitution of s. 25**

6. Section 25 of the principal Act is repealed and the following section is substituted:

##### **Fisheries officers**

25. (1) The Minister may appoint any of the following persons to be fisheries officers for the purposes of this Act:

- (a) Public Service employees;
- (b) officers under the Commonwealth Act;
- (c) persons authorized under a law of another State or a Territory of the Commonwealth related to fishing to exercise powers or discharge duties related to the enforcement of that law.

(2) The Director and each member of the police force are fisheries officers for the purposes of this Act.

(3) An appointment under subsection (1) may be made subject to conditions limiting the area within which, or the purposes for which, the appointee may exercise the powers of a fisheries officer.

(4) The Minister may, by notice in writing served on a fisheries officer—

- (a) vary or revoke a condition of an appointment imposed under subsection (3);
- or
- (b) revoke the appointment.

#### **Identity cards and their production**

7. Section 26 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) Where the powers of a fisheries officer have been limited pursuant to section 25 (3), the identity card issued to the officer must contain a statement of the limitation on the officer's powers.

**Powers of fisheries officers**

8. Section 28 of the principal Act is amended—

(a) by striking out from subsection (13) “boat” twice occurring and substituting, in each case, “boat or vehicle”;

and

(b) by striking out from subsection (14) “boat” wherever occurring and substituting, in each case, “boat or vehicle”.

**Substitution of s. 30**

9. Section 30 of the principal Act is repealed and the following section is substituted:

**Protection from personal liability**

30. (1) A person engaged in the administration of this Act incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.

(2) Subject to subsection (3), a liability that would, but for subsection (1), lie against the person lies instead against the Crown.

(3) No liability lies against the Crown for any loss arising out of—

(a) the granting of consent by the Director to the transfer of a fishery licence contrary to section 38 (3) (b);

(b) the acceptance by the Director of the surrender of a fishery licence without the consent of a person referred to in section 61 (2);

or

(c) a failure on the part of the Director to discharge duties under section 65 (3), (4) or (5).

**Persons and boats engaged or used in fisheries to be licensed**

10. Section 34 of the principal Act is amended by inserting in paragraph (b) of subsection (2) “natural” before “person” first occurring.

**Grant of licences or registration**

11. Section 36 of the principal Act is amended by striking out from subsection (1) “and” between subparagraphs (ii) and (iii) of paragraph (c) and inserting after subparagraph (iii) the following word and subparagraph:

and

(iv) that no person other than the person nominated as the proposed master is registered as the master of the boat.

**Conditions of licences**

12. Section 37 of the principal Act is amended—

(a) by striking out “The” being the first word of subsection (1) and substituting “Subject to subsection (2a), the”;

(b) by inserting after subsection (1) the following subsection:

(1a) The Director may impose a condition of a licence notwithstanding that the effect of the condition is to prevent for a specified period—

- (a) the taking of one or more species of fish that could otherwise be lawfully taken pursuant to the licence;
- or
- (b) the use of any device or equipment that could otherwise be lawfully used to take fish pursuant to the licence.;
- (c) by striking out “The” being the first word of subsection (2) and substituting “Subject to subsection (2a), the”;

and

- (d) by inserting after subsection (2) the following subsections:

(2a) The Director must not—

- (a) impose a condition that has the effect described in subsection (1a) (a) or (b);

or

- (b) vary a condition so that it has that effect, except with the approval of the Minister.

(2b) Before giving his or her approval under subsection (2a), the Minister must—

- (a) give the holder of the licence and the prescribed fishing industry body notice in writing setting out the condition to be imposed or the manner in which a condition is to be varied, as the case may be, and the reasons for the proposed action;

and

- (b) not later than 14 days after giving notice, consult or use his or her best endeavours to consult with the holder of the licence and the prescribed fishing industry body in relation to the matter.

(2c) In subsection (2b)—

“prescribed fishing industry body” means—

- (a) the South Australian Fishing Industry Council;

or

- (b) if the Council ceases to exist, such fishing industry body as is prescribed by regulation for the purposes of this definition.

### **Transfer of licences**

13. Section 38 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) The Director cannot consent to the transfer of a licence unless—

- (a) the Director is satisfied as to the matters prescribed by the scheme of management;

and

- (b) where the register of licences includes a notation made pursuant to section 65 that a specified person has an interest in the licence—that person consents to the transfer.

**Temporary prohibition of certain fishing activities**

14. Section 43 of the principal Act is amended by striking out subsection (3) and substituting the following subsections:

(2) Where, in the opinion of the Minister, it is necessary to take urgent action to safeguard public health or protect living resources of the waters to which this Act applies, the Minister, or a fisheries officer authorized by the Minister, may—

(a) direct any person or any persons of a specified class to not engage in a fishing activity of a specified class during a specified period;

(b) vary or revoke such a direction.

(3) A direction or authorization under subsection (2) must be given in written form unless the Minister or fisheries officer considers that impracticable by reason of the urgency of the situation, in which case it may be given orally.

(4) Where an authorization is given under subsection (2), written notice of the authorization must be given to the person to whom it relates as soon as practicable.

(5) Where a direction is given under subsection (2), notice of the direction must be published in the *Gazette* as soon as practicable.

(6) A person must not engage in a fishing activity in contravention of a declaration or direction under this section.

Penalty: For a first offence—division 7 fine; for a second offence—division 6 fine; for a subsequent offence—division 5 fine.

**Offences with respect to sale, purchase or possession of fish**

15. Section 44 of the principal Act is amended—

(a) by inserting after paragraph (a) of subsection (2) the following paragraph:

(ab) fish of a class declared to be protected for the purposes of section 42;;

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

(2a) Regulations made for the purposes of subsection (2) (b) may prescribe a class of fish comprised of or including fish taken elsewhere than in waters to which this Act applies.;

(c) by striking out subsection (3) and substituting the following subsection:

(3) In proceedings for an offence against subsection (1) or (2), it is a defence if the defendant proves—

(a) —

(i) that the fish to which the proceedings relate—

(A) were purchased from a person whose ordinary business was the selling of such fish;

and

(B) were purchased in the ordinary course of that business;

or

(ii) that the defendant did not take the fish in contravention of this Act;

and

(b) that the defendant did not know, and had no reason to believe, that the fish were, as the case may be—

- (i) fish taken in waters to which this Act applies but not pursuant to a licence;
  - (ii) fish taken in contravention of this Act;
  - (iii) fish of a class declared to be protected for the purposes of section 42;
- or
- (iv) fish of a prescribed class;

and

(d) by striking out from subsection (4) “proves that the fish were not taken in contravention of this Act or”.

#### **Regulations relating to fisheries and fishing**

16. Section 46 of the principal Act is amended—

(a) by inserting in paragraph (b) after subparagraph (v) the following subparagraph:

(va) provide that no further licences may be granted in respect of the fishery;;

(b) by inserting in paragraph (b) after subparagraph (viii) the following subparagraph:

(viiia) in respect of a miscellaneous fishery provide for licences of different kinds by empowering the Director to impose licence conditions limiting the class of fishing activities that may be engaged in pursuant to a licence, limiting the term for which a licence may remain in force or imposing any other limitation or restriction;;

and

(c) by striking out from paragraph (l) “the prescribed information” and substituting “such information as the Director may, with the approval of the Minister, require”.

#### **Substitution of s. 48**

17. Section 48 of the principal Act is repealed and the following sections are substituted:

##### **Constitution of marine parks**

48. (1) The Governor may, by proclamation—

(a) constitute as a marine park any waters, or land and waters, specified in the proclamation, that the Governor considers to be of national significance by reason of the aquatic flora or fauna of those waters or the aquatic habitat;

and

(b) assign a name to the marine park so constituted.

(2) The Governor may, by subsequent proclamation—

(a) abolish a marine park constituted under this section;

(b) alter the boundaries of a marine park constituted under this section;

or

(c) alter the name of a marine park constituted under this section.



(3) The Minister must—

(a) submit any proposal to constitute, or alter the boundaries of, a marine park—

(i) where the marine park includes, or is to include, land under the jurisdiction of the Minister of Lands to that Minister for approval;

(ii) where the marine park includes, or is to include, land under the jurisdiction of the Minister of Marine to that Minister for approval;

(b) submit any such proposal to the Minister of Mines and Energy and consider the views of that Minister in relation to the proposal.

(4) A proclamation must not be made under subsection (1) or (2) (b) without the approval or approvals required by this section.

(5) A proclamation must not be made under subsection (2) (a) or (b) except in pursuance of a resolution passed by both Houses of Parliament.

(6) Notice of a motion for a resolution under subsection (5) must be given at least 14 sitting days before the motion is passed.

**Control and administration of marine parks**

48a. (1) The Minister has the control and administration of all marine parks constituted under this Act.

(2) The Minister may grant on appropriate terms and conditions a lease or licence entitling a person to rights of entry, use or occupation in respect of a marine park.

(3) Any lease or licence granted in respect of waters or land and waters constituted as a marine park under this Act, and in force immediately before the waters or land and waters are so constituted continues, subject to its terms and conditions, in force for the remainder of the term for which it was granted as if it had been granted by the Minister under this section.

**Plans of management for marine parks**

48b. (1) The Minister must, within two years after the constitution of a marine park, propose a plan of management in relation to the marine park.

(2) The Minister may, at any time, prepare an amendment to a plan of management, or prepare a plan of management to be substituted for a previous plan.

(3) Before preparing a plan of management the Minister must—

(a) by public advertisement, invite members of the public to make representations to the Minister (within a period of not less than two months following publication of the advertisement) as to matters that should be addressed by the plan of management;

and

(b) in the case of a marine park that is adjacent to, or contiguous with, a reserve constituted under the *National Parks and Wildlife Act 1972* or land that the Minister administering that Act has informed the Minister is proposed to be constituted as a reserve under that Act, consult with the Minister administering that Act as to matters that should be addressed by the plan of management,

and the Minister must, when preparing the plan of management, consider all representations made by members of the public in response to the advertisement and the views of the Minister administering the *National Parks and Wildlife Act 1972*.

- (4) The plan of management must—
- (a) set forth proposals of the Minister in relation to the management of the marine park;
- and
- (b) set forth any other proposals by which the Minister proposes to accomplish the objectives of this Act in relation to the marine park.
- (5) The Minister must incorporate in the plan of management for a marine park such measures as the Minister considers necessary or appropriate for—
- (a) the protection, conservation and preservation of the flora and fauna of the waters included in the marine park and their habitat;
  - (b) regulation of fishing, mining and research activities in, public access to, and other use of, the marine park to prevent or minimize adverse effect on the flora and fauna and their habitat;
  - (c) co-ordination of the management of the marine park with the management of any adjacent reserve, park or conservation zone or area established under the law of this or any other State or of the Commonwealth;
  - (d) the promotion of public understanding of the purposes and significance of the marine park.
- (6) When a plan of management has been prepared, the Minister must give notice of that fact by public advertisement.
- (7) The notice must—
- (a) specify an address at which copies of the plan of management may be inspected;
- and
- (b) specify an address to which representations in connection with the plan of management may be forwarded.
- (8) Any person may within three months after publication of the notice, or such longer period as may be specified in the notice, make representations to the Minister in connection with the plan of management.
- (9) The Minister must make copies of all representations made under subsections (3) and (8) available for public inspection or purchase (except in the case of a representation that was made in confidence) and for that purpose the Minister must, by public advertisement, give notice of the place or places at which the copies are available.
- (10) The Minister may adopt a plan of management—
- (a) without alteration;
- or
- (b) with such alterations as the Minister thinks reasonable in view of the representations made by members of the public.
- (11) When the Minister adopts a plan of management, notice of that fact must be given by public advertisement.
- (12) The Director must, on application and payment of the prescribed fee, furnish the applicant with a copy of a plan of management adopted under this section.

(13) In this section—

“plan of management” includes an amendment to a plan of management:

“public advertisement” means an advertisement published in the *Gazette* and in a newspaper circulating throughout the State.

**Non-application of Planning Act 1982, etc.**

48c. (1) The *Planning Act 1982* does not apply to development undertaken in, or in relation to, a marine park pursuant to a plan of management adopted by the Minister in relation to that marine park.

(2) In this section—

“development” has the same meaning as in the *Planning Act 1982*.

**Implementation of plans of management**

48d. (1) Subject to subsection (2), where the Minister has adopted a plan of management in relation to a marine park—

(a) the provisions of the plan must be carried out in relation to that marine park;

and

(b) activities must not be undertaken in relation to that marine park unless those activities are in accordance with the plan of management.

(2) Where a mining tenement has been granted in relation to land that forms part of, or has, since the tenement was granted, become part of, a marine park, the management of the marine park is subject to the exercise by the holder of the tenement of rights under the tenement.

**Agreement as to conditions**

48e. (1) The Minister administering this Act and the Minister of Mines and Energy may enter into an agreement with the holder of a mining tenement in relation to land that forms part of a marine park imposing conditions limiting or restricting the exercise of rights under the tenement by the holder of the tenement and by his or her successors in title.

(2) If a person contravenes, or fails to comply with, a condition imposed by agreement under subsection (1) in relation to a mining tenement, the Minister of Mines and Energy must, at the request of the Minister administering this Act, serve notice on the holder of the tenement requiring the holder to rectify the contravention or failure in the manner and in the period (which must not exceed three months) set out in the notice.

(3) If the holder of a tenement on whom a notice has been served under subsection (2) fails to comply with the notice, the Minister of Mines and Energy may cancel the tenement.

**Rights of prospecting and mining**

48f. (1) Subject to subsection (2), rights of entry, prospecting, exploration or mining cannot be acquired or exercised pursuant to the *Mining Act 1971*, the *Petroleum Act 1940* or the *Petroleum (Submerged Lands) Act 1982* in respect of land forming part of a marine park.

(2) The Governor may, by proclamation, declare that subject to any conditions specified in the proclamation, rights of entry, prospecting, exploration or mining may be acquired and exercised in respect of land forming part of a marine park.

(3) A person must not contravene or fail to comply with a condition of a proclamation under this section.

Penalty: Division 5 fine.

(4) A proclamation under subsection (2) has effect according to its terms.

(5) The Governor may, by proclamation, vary or revoke a proclamation under subsection (2).

(6) Rights of entry, prospecting, exploration or mining acquired by virtue of a proclamation under subsection (2) must be exercised subject to the plan of management for the marine park except—

(a) where those rights were vested in the person seeking to exercise them before the commencement of this section;

or

(b) where those rights are exercised pursuant to an agreement with the Minister (or with the Minister and the Minister of Mines and Energy), in which case implementation of the plan of management is subject to the agreement.

#### **Protection of aquatic habitat**

48g. (1) Except as provided by the regulations or pursuant to a permit under this section, a person must not—

(a) enter or remain in an aquatic reserve or marine park;

or

(b) engage in any fishing activity in an aquatic reserve or marine park.

Penalty: For a first offence—division 7 fine; for a second offence—division 6 fine; for a subsequent offence—division 5 fine.

(2) Except as provided by the regulations or pursuant to a permit under this section, a person must not engage in an operation involving or resulting in—

(a) disturbance of the bed of any waters;

or

(b) removal of or interference with aquatic or benthic flora or fauna of any waters.

Penalty: For a first offence—division 7 fine; for a second offence—division 6 fine; for a subsequent offence—division 5 fine.

(3) The Director may—

(a) issue a permit to any person authorizing that person to engage in any activity, or do any act specified in the permit, in an aquatic reserve, during such period and subject to such conditions as may be specified in the permit;

(b) vary or revoke a condition of such a permit or impose a further condition.

(4) If a condition of a permit under subsection (3) is contravened or not complied with, the Director may, by notice in writing served on the holder of the permit, revoke the permit.

(5) The Minister may, if satisfied that the carrying out of a particular activity or the doing of a particular act in a marine park is in accordance with the plan of management adopted in relation to the marine park, issue a permit to any person

authorizing that person to engage in that activity or do that act in the marine park during such period and subject to such conditions as may be specified in the permit.

(6) The Minister may, if he or she thinks fit, vary or revoke a condition of a permit under subsection (5), or impose a further condition.

(7) If a condition of a permit under subsection (5) is contravened or not complied with, the Minister may, by notice in writing served on the holder of the permit, revoke the permit.

(8) The holder of a permit under this section must not contravene, or fail to comply with, a condition of the permit.

Penalty: For a first offence—division 7 fine; for a second offence—division 6 fine; for a subsequent offence—division 5 fine.

(9) In this section—

“aquatic or benthic flora or fauna” includes mangroves but does not include those species of fin fish, sharks, crustaceans, molluscs, echinoderms, coelenterata and annelids prescribed for the purposes of this section.

### **Regulations**

48h. The Governor may make regulations prescribing, and providing for the recovery of, fees or charges payable for entry to a marine park or for the use of facilities provided in a marine park.

### **Substitution of s. 51**

18. Section 51 of the principal Act is repealed and the following sections are substituted:

#### **Persons engaged in fish farming to be licensed**

51. A person must not engage in fish farming unless—

(a) the person holds a licence issued by the Director in accordance with the regulations;

or

(b) the person is acting as an agent of a person holding such a licence.

Penalty: Division 6 fine.

#### **Regulations relating to fish farming, exotic fish and disease in fish**

51a. (1) The Governor may make regulations for the regulation of fish farming and the control of exotic fish and disease in fish.

(2) Without limiting the generality of subsection (1), the regulations may—

(a) prescribe matters of which the Director must be satisfied before granting a fish farming licence;

(b) empower the Director to impose, at any time, conditions on fish farming licences and prescribe matters that may be the subject of conditions;

(c) prescribe the term of fish farming licences and provide for the renewal of such licences;

(d) prescribe matters of which the Director must be satisfied before renewing a fish farming licence;

(e) authorize the transfer of fish farming licences and prescribe matters of which the Director must be satisfied before consenting to the transfer of such licences;

- (f) prescribe fees for applications for the granting, renewal or transfer of fish farming licences;
- (g) provide for the payment, refund and recovery of fees or parts of fees payable in respect of fish farming licences;
- (h) require the holder of a fish farming licence to furnish the Director with returns in a form determined by the Minister setting out such information as the Director may, with the approval of the Minister, require relating to the fish farmed and operations carried on by the holder of the licence;
- (i) restrict or regulate the treatment, handling, storage or movement of, or dealing with, farmed fish;
- (j) prescribe the measures to be taken for the prevention, elimination or control of diseases in farm fish, or the prevention of the escape of farm fish or water used for the purpose of fish farming;
- (k) require any person operating a fish farm or keeping any fish to notify the Director of the occurrence of disease or symptoms of disease in the fish farmed or kept by that person;
- (l) prohibit, restrict or regulate the sale or processing of farm fish;
- (m) prohibit, restrict or regulate the bringing into the State or possession or control of fish that may be affected by disease;
- (n) prescribe the powers of fisheries officers for the detection, prevention, elimination or control of disease in fish;
- (o) regulate the disposal of the water in which fish have been kept;
- (p) prescribe and provide for the measures to be taken and the powers of the Director and other fisheries officers for the recovery, eradication or containment of exotic fish or other fish that have been released or have escaped into any waters, or for the treatment of waters contaminated by water in which such fish have been kept;
- (q) prescribe fines (not exceeding a division 6 fine) for contravention of, or non-compliance with, any regulation made under this section.

#### **Fish processors required to be registered**

19. Section 54 of the principal Act is amended by inserting after subsection (6) the following subsections:

- (7) Subject to the regulations, a registered fish processor must not process fish of a prescribed class unless authorized to do so by the Director.
- (8) An authorization under subsection (7) must be endorsed on the certificate of registration.
- (9) An authorization under subsection (7) remains in force for such period as may be specified on the certificate of registration.
- (10) The Director may, in an authorization under subsection (7), limit the species of fish that may be processed pursuant to the authorization and may vary or revoke any such limitation.
- (11) The Director may refuse to grant an authorization under subsection (7) unless satisfied as to the matters prescribed in the regulations.
- (12) If the Minister is satisfied that a person to whom an authorization under subsection (7) has been granted has been convicted of an offence against this Act or

an offence related to fishing against any other Act (including an Act of the Commonwealth or another State or a Territory of the Commonwealth), the Minister may, by notice in writing to the person—

(a) revoke the authorization;

and

(b) require the person to return the certificate of registration at a place and within a period specified in the notice.

(13) A person must not fail to comply with a requirement imposed by notice under subsection (12) (b).

Penalty: Division 8 fine.

#### **Regulations relating to fish processing**

20. Section 55 of the principal Act is amended—

(a) by striking out from paragraph (b) “the prescribed information” and substituting “such information as the Director may, with the approval of the Minister, require”;

and

(b) by striking out paragraph (i) and substituting the following paragraphs:

(i) empower the Director to issue, and prescribe fees to be paid for the issue of, seals and other marks for the labelling, and packages for the consignment, of processed fish;

(j) prescribe fees in respect of an application for authorization to process fish of a prescribed class;

(k) empower fisheries officers to take samples of any products of fish of a prescribed class for the purpose of analysis and provide that no compensation is payable for the taking of such samples;

(l) prescribe fines (not exceeding a division 6 fine) for contravention of, or non-compliance with, any regulation made under this section.

#### **Suspension or cancellation of authorities by courts**

21. Section 56 of the principal Act is amended—

(a) by inserting in paragraph (a) of subsection (1) “or periods” after “period”;

and

(b) by striking out paragraph (a) of subsection (3) and substituting the following paragraph:

(a) if the holder has one previous conviction for a prescribed offence, suspend the licence for a period or periods specified by the court (being a period of not less than three months, or periods totalling not less than three months, during which fishing pursuant to the licence would otherwise have been lawful);

#### **Review of decisions relating to authorities**

22. Section 58 of the principal Act is amended by inserting after paragraph (b) of subsection (1) the following paragraph:

(ba) by a decision of the Minister under section 54 (12) to revoke an authorization;

#### **Substitution of s. 61**

23. Section 61 of the principal Act is repealed and the following section is substituted:

**Surrender of authorities**

61. (1) The holder of an authority may, subject to subsection (2), at any time surrender the authority to the Director.

(2) Where the register of fishery licences includes a notation made pursuant to section 65 that a specified person has an interest in a licence, the licence cannot be surrendered without the consent of the person specified in that notation.

(3) Where an authority is surrendered to the Director the authority ceases to have any force or effect.

**Director to keep register of authorities**

24. Section 65 of the principal Act is amended by inserting after subsection (2) the following subsections:

(3) The Director must, on application by the holder of a fishery licence and payment of the prescribed fee, make a notation on the register that a specified person nominated by the holder of the licence has an interest in the licence.

(4) Where—

(a) the register includes a notation made pursuant to subsection (3) that a specified person has an interest in a fishery licence;

and

(b) proceedings for an offence against this Act are commenced against the holder of the licence,

the Director must give or cause to be given to the person specified in the notation written notice of the particulars of the alleged offence.

(5) Where the register includes a notation made pursuant to subsection (3) that a specified person has an interest in a fishery licence, the Director must, on application by that person, remove that notation from the register.

**Additional penalty based on value of fish taken unlawfully**

25. Section 66 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) For the purposes of subsection (1), a fish taken in contravention of this Act is to be taken to have a wholesale value equivalent to that of a fish of the same species taken not in contravention of this Act.

**Insertion of s. 66a**

26. The following section is inserted after section 66 of the principal Act:

**Confidentiality**

66a. (1) A person must not divulge information obtained (whether by that person or some other person) in the administration of this Act except—

(a) as authorized by or under this Act;

(b) with the consent of the person from whom the information was obtained or to whom the information relates;

(c) in connection with the administration of this Act;

or



(d) for the purposes of any legal proceedings arising out of the administration of this Act.

**Penalty:** Division 6 fine.

(2) Notwithstanding any other law to the contrary, the Minister or Director cannot be required by subpoena or otherwise to produce to a court any information contained in a return furnished by a licensee to the Director under this Act.

## SCHEDULE

The principal Act is further amended as follows:

Provision Amended	How Amended
Long title	Strike out "to repeal the Fisheries Act, 1971-1980; to repeal the Fibre and Sponges Act, 1909-1973;"
Section 2	Strike out this section.
Section 4	Strike out this section.
Section 5 (3)	Strike out "shall" and substitute "is to".
Section 5 (4)	Strike out "shall" and substitute "will".
Section 5 (6)	Strike out "shall apply" and substitute "applies".
Section 7 (2)	Strike out "on him".
Section 8	Strike out "shall" and substitute "must"; Strike out "he" and substitute "the person".
Section 10 (2)	Strike out "shall" and substitute "will"; Strike out "deemed" and substitute "taken".
Section 10 (4)	Strike out "his".
Section 10 (6)	Strike out "shall" and substitute "will".
Section 10 (7)	Strike out "shall" and substitute "will"; Strike out "deemed" and substitute "taken".
Section 11 (2)	Strike out "his deputy" and substitute "a deputy of that Minister"; Strike out "shall" and substitute "will".
Section 11 (3)	Strike out "shall be deemed" (twice occurring) and substitute, in each case, "will be taken".
Section 12	Strike out "shall" and substitute "must".
Section 16 (3)	Strike out "shall" and substitute "will".
Section 17	Strike out "shall" and substitute "is to".
Section 18	Strike out "shall" and substitute "will".
Section 19 (3)	Strike out "shall" and substitute "will".
Section 20	Strike out "shall".
Sections 21 and 22	Strike out these sections and substitute— <b>The Minister</b> 21. (1) The Minister— (a) is a body corporate; and (b) has full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate. (2) Where a document appears to bear the common seal of the Minister, it will be presumed, in the absence of proof to the contrary, that the document was duly executed by the Minister. <b>The Director</b> 22. (1) The office of Director of Fisheries continues in existence. (2) The Director of Fisheries is a Public Service employee.
Section 23 (1)	Strike out "officer of the Public Service of the State" and substitute "Public Service employee"; Insert "or her" after "his".
Section 23 (2)	Strike out "shall not" and substitute "cannot".
Section 23 (3)	Strike out "officer of the Public Service of the State" and substitute "Public Service employee"; After "his" insert "or her".
Section 23 (4)	Strike out "shall" and substitute "will"; Strike out "deemed" and substitute "taken".

Provision Amended	How Amended
Section 23 (5)	Strike out "office" and substitute "position".
Section 23 (6)	Strike out "his".
Section 23 (8)	Strike out "shall" and substitute "will".
Section 23 (9)	Strike out "shall" and substitute "will"; Strike out "deemed" and substitute "taken".
Section 24 (1)	Strike out "shall, on or before the thirty-first day of" and substitute "must, on or before 31"; Strike out "thirtieth day of" and substitute "30".
Section 24 (2)	Strike out "shall" and substitute "must"; Strike out "his".
Section 26 (1)	Strike out "shall" and substitute "must"; After "he" insert "or she".
Section 26 (3)	Strike out "shall, upon" and substitute "must, on"; Strike out "he" and substitute "the officer"; Strike out "of his"; After "his" (wherever occurring) insert, in each case, "or her".
Section 27 (1)	Strike out "shall" and substitute "must".
Section 27 (2)	Strike out "he shall, upon such conviction, cease" and substitute "the officer ceases, on that conviction".
Section 27 (3)	Strike out "shall, if he" and substitute "must, if he or she".
Section 28 (1)	After "he" (wherever occurring) insert, in each case, "or she".
Section 28 (1) (d)	After "his" (twice occurring) insert, in each case, "or her".
Section 28 (1) (e)	Strike out "and her" and substitute ", the boat's".
Section 28 (1) (f)	After "his" insert "or her".
Section 28 (2)	Strike out "shall not" and substitute "cannot".
Section 28 (4)	Strike out "shall" and substitute "must".
Section 28 (4) (a)	After "him" (twice occurring) insert, in each case, "or her".
Section 28 (5)	Strike out "shall" and substitute "must".
Section 28 (6) (b)	After "he" insert "or she".
Section 28 (6) (b) (i)	After "his" (twice occurring) insert, in each case, "or her".
Section 28 (7)	Strike out "shall" and substitute "must"; After "him" insert "or her".
Section 28 (8)	Strike out this subsection and substitute— (8) A person arrested in pursuance of this section who escapes from lawful custody is guilty of an offence. Penalty: Division 5 fine or division 5 imprisonment, or both.
Section 28 (9)	Strike out "shall apply—" and substitute "apply:".
Section 28 (9) (a)	Strike out "shall" and substitute "is to".
Section 28 (9) (c)	Strike out "shall be" and substitute "is".
Section 28 (9) (e)	Strike out "shall" and substitute "must".
Section 28 (9) (f)	Strike out "moneys" and substitute "money"; Strike out "shall" and substitute "must".
Section 28 (10)	Strike out "shall".
Section 28 (10) (a) (second occurring)	Redesignate to read as paragraph (c); Strike out "he" and substitute "the Minister"; Strike out "shall" and substitute "must".
Section 28 (10) (b) (second occurring)	Redesignate to read as paragraph (d); Strike out "shall" and substitute "must".
Section 28 (10) (c)	Redesignate to read as paragraph (e); Strike out "he" (twice occurring) and substitute, in each case, "the Minister"; Strike out "shall" and substitute "must".

Provision Amended	How Amended
Section 28 (11)	Strike out "his" (first occurring); After "he" insert "or she"; After "him" insert "or her"; Strike out "his" (second occurring) and substitute "those".
Section 28 (12)	Strike out "shall have" and substitute "has".
Section 28 (13)	After "he" insert "or she"; After "his" insert "or her".
Section 28 (14)	Strike out "he" and substitute "the Minister".
Section 29	Strike out "shall" and substitute "must"; After "he" insert "or she".
Section 32 (1)	Strike out this subsection and substitute— (1) The <i>Fisheries Research and Development Fund</i> ("the Fund") continues in existence. (1a) The Fund will continue to be kept in the Treasury.
Section 32 (2)	Strike out "shall consist of the following moneys" and substitute "consists of the following".
Section 32 (2) (a)-(f)	Strike out "moneys" (wherever occurring) and substitute, in each case, "money".
Section 32 (4)	Strike out "of the moneys" and substitute "money"; Strike out "that are".
Section 34 (1)	Strike out "No person shall" and substitute "A person must not".
Section 34 (1) (a) and (b)	Strike out "he" (twice occurring) and substitute, in each case, "the person".
Section 34 (2)	Strike out "no person shall" and substitute "a person must not".
Section 34 (2) (a) (i)	After "him" insert "or her"; After "he" insert "or she".
Section 35 (2) (a)	Strike out "he" and substitute "the Director".
Section 36 (1) (b) and (c)	Strike out "shall" (twice occurring) and substitute, in each case, "must"; After "he" (twice occurring) insert, in each case, "or she".
Section 36 (3) and (4)	Strike out "shall" (twice occurring) and substitute, in each case, "must".
Section 37 (3) and (4)	Strike out "shall" (twice occurring) and substitute, in each case, "must".
Section 38 (1)	Strike out "no licence shall be" and substitute "a licence is not".
Section 38 (5)	Strike out "shall pass to and become vested" and substitute "vests"; Strike out "shall not" and substitute "cannot"; After "him" insert "or her".
Section 38 (6)	Strike out "his".
Section 38 (6) (b)	Strike out "shall be deemed" and substitute "will be taken".
Section 38 (7)	Strike out "becomes vested" and substitute "vests"; Strike out "shall" and substitute "is"; Strike out "be" (second occurring).
Section 39 (1)	Strike out "shall" and substitute "will".
Section 39 (2)	Strike out "shall be deemed" (twice occurring) and substitute, in each case, "will be taken".
Section 40 (1)	Strike out "shall" and substitute "must"; After "him" insert "or her"; After "he" insert "or she".
Section 40 (2)	Strike out "shall" and substitute "must"; After "him" insert "or her".

Provision Amended	How Amended
Section 41	Strike out "No person shall" and substitute "A person must not".
Section 42	Strike out "No person shall" and substitute "A person must not".
Section 45 (1)	Strike out "No person shall" and substitute "A person must not".
Section 45 (2)	Strike out "he shall" and substitute "the person must".
Section 46 (b) (iii)	Strike out "shall" and substitute "must".
Section 47 (2)	Strike out "shall be deemed" and substitute "will be taken".
Section 47 (3)	Strike out "shall not" and substitute "cannot".
Section 49 (1)	Strike out "shall" and substitute "must".
Section 49 (4)	Strike out "shall" and substitute "will".
Section 49 (5)	Strike out "he" and substitute "the Director".
Section 49 (6)	Strike out "shall" and substitute "must".
Section 50 (1)	Strike out "no person shall" and substitute "a person must not".
Section 50 (3)	Strike out "he" and substitute "the Director".
Section 50 (4)	Strike out "shall" and substitute "must".
Section 53 (1)	After "he" insert "or she".
Section 53 (2)	Strike out "shall not" and substitute "cannot".
Section 53 (3)	Strike out "shall be such as are" and substitute "will be as".
Section 53 (4)	Strike out "shall" and substitute "must".
Section 53 (5) (a)	Strike out "shall continue" and substitute "continues".
Section 53 (5) (b)	Strike out "shall not" and substitute "cannot".
Section 53 (6)	Strike out "shall continue" and substitute "continues".
Section 54 (1)	Strike out "no person shall" and substitute "a person must not"; After "he" insert "or she".
Section 54 (2)	Strike out "No registered fish processor shall" and substitute "A registered fish processor must not".
Section 54 (4)	Strike out "shall" and substitute "will".
Section 54 (6)	Strike out "he shall" and substitute "the person must".
Section 56 (2)	Strike out "shall" and substitute "must".
Section 56 (3)	Strike out "shall" and substitute "must".
Section 56 (3) (b)	Strike out "he" and substitute "the holder".
Section 56 (4) (a)	Strike out "shall" and substitute "must".
Section 56 (4) (b)-(d)	Strike out "shall" (wherever occurring) and substitute, in each case, "will".
Section 56 (5)	Strike out "shall" and substitute "must".
Section 56 (6) (a)-(c)	Strike out "shall" (wherever occurring) and substitute, in each case, "must".
Section 56 (7)	Strike out "shall" and substitute "will"; Strike out "deemed" and substitute "taken".
Section 56 (8)	Strike out "shall remain" and substitute "remains".
Section 56 (9)	Strike out "shall be" and substitute "is".
Section 57 (1)	After "him" insert "or her"; Strike out "he is".
Section 57 (3)	Strike out "shall remain" and substitute "remains".
Section 58 (5)	Strike out "shall" and substitute "must"; After "him" insert "or her"; Strike out "his" and substitute "the".

Provision Amended	How Amended
Section 58 (6)	After "his" insert "or her"; Strike out "shall run" and substitute "runs".
Section 58 (9)	Strike out "shall lie" and substitute "lies".
Section 59 (3)	After "he" insert "or she".
Section 59 (4)	Strike out "shall" and substitute "must".
Section 60 (1)	Strike out "to him".
Section 60 (2)	Strike out "shall" and substitute "must".
Section 60 (3)	Strike out "shall" and substitute "is"; Strike out "be".
Section 62	Strike out "he is"; Strike out "he" and substitute "the Director".
Section 63	Strike out "shall" and substitute "must".
Section 63 (b)	After "his" (twice occurring) insert, in each case, "or her".
Section 63 (c)	After "himself" insert "or herself".
Section 64 (2)	Strike out "shall" and substitute "must".
Section 64 (3) (a) and (b)	Strike out "shall" (twice occurring) and substitute, in each case, "will".
Section 64 (3) (c)	Strike out "shall be deemed" and substitute "will be taken".
Section 65 (1)	Strike out "shall" and substitute "must"; Strike out "he" and substitute "the Director".
Section 65 (2)	Strike out "shall" and substitute "must".
Section 66	Strike out "shall" and substitute "must".
Section 67 (1)	Strike out "shall" and substitute "is"; Strike out "be" (last occurring).
Section 67 (2)	Strike out "shall" and substitute "is"; Strike out "be deemed to be".
Section 67 (3)-(10)	Strike out "shall" (wherever occurring) and substitute, in each case, "will".
Section 67 (4) and (6)	After "his" (twice occurring) insert, in each case, "or her".
Section 67 (8)	After "him" insert "or her".
Section 68	Strike out "shall" and substitute "must".
Section 69 (1)	Strike out "shall be" and substitute "is"; Strike out "he" (first occurring) and substitute "the member"; After "he" (second occurring) insert "or she".
Section 69 (2)	After "he" insert "or she"; Strike out "shall be" and substitute "is".
Section 69 (3)	Strike out "shall be" and substitute "is".
Section 70 (1)	Strike out this subsection and substitute— (1) Offences against this Act are summary offences.
Section 71 (1)	Strike out "shall be deemed" and "will be taken".
Section 71 (1) (b)	Strike out "registered or"; Strike out "him" (twice occurring) and substitute, in each case, "the person"; After "his" insert "or her".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor