

FISHERIES AMENDMENT ACT 1985

No. 88 of 1985

TABLE OF PROVISIONS

<ol style="list-style-type: none"> 1. Short title. 2. Commencement. 3. Principal Act. 4. Interpretation. 5. Amendment of section 3 of Principal Act (Interpretation). 6. Amendment of section 8 of Principal Act (Powers of the Minister). 7. Insertion in Principal Act of new sections 8B and 8C. 8B—Annual report. 8C—Consultation and co-operation with police. 8. Amendment of section 9 of Principal Act (Regulations). 9. Insertion in Principal Act of new section 11. 11—Sea Fisheries Research Account. 10. Insertion in Principal Act of new section 51A. 	<ol style="list-style-type: none"> 51A—Fish farm development committee. 11. Amendment of section 58 of Principal Act (Forfeiture of boats, appurtenances, &c., used in contravention of Act). 12. Amendment of section 60 of Principal Act (Disposal of perishable articles). 13. Further amendments of Principal Act. 14. Amendment of section 29 of <i>Crown Lands Act 1976</i> (Lease of Crown land). 15. Amendment of Schedule 1 to the <i>Tasmanian State Service Act 1984</i> (AGENCIES). 16. Transitional provisions.
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SCHEDULE 1

AMENDMENTS OF THE PRINCIPAL ACT



FISHERIES AMENDMENT ACT 1985

No. 88 of 1985

AN ACT to amend the Fisheries Act 1959, the Crown Lands Act 1976, and the Tasmanian State Service Act 1984.

[Royal Assent 1 November 1985]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Fisheries Amendment Act 1985*. Short title.

2—(1) This section and section 1 shall commence on the day on which this Act receives the Royal assent. Commencement.

(2) Except as provided in subsection (1), this Act shall commence on the day fixed under section 2 (2) of the *Fisheries Development Act (Repeal) Act 1985*.

Principal Act. **3**—In this Act, the *Fisheries Act 1959** is referred to as the Principal Act.

Interpretation. **4**—(1) In this Act, unless the contrary intention appears—
 “Authority” means the Fisheries Development Authority constituted under the *Fisheries Development Act 1977*;
 “commencement day” means the day fixed under section 2 (2) of the *Fisheries Development Act (Repeal) Act 1985*;
 “Director” means the Director of Sea Fisheries.

(2) In this Act, a reference to the Principal Act as amended is a reference to the Principal Act as amended by this Act.

Amendment of section 3 of Principal Act (Interpretation).

5—(1) Section 3 (1) of the Principal Act is amended—
 (a) by inserting the following definition after the definition of “dam” :—

“Director” means the Director of Sea Fisheries;

(b) by omitting the definition of “fishing industry” and substituting the following definition:—

“fishing industry” includes the following activities:—

- (a) marine farming;
- (b) the taking or landing of fish;
- (c) the carrying out of any operation for the processing of fish or marine plants;
- (d) the obtaining or manufacturing of fish products or marine plant products;
- (e) the transport, storage, or sale of fish, fish products, marine plants, or marine plant products;

(c) by inserting the following definitions after the definition of “licensed fish farm” :—

“marine farm” means an area in State fishing waters that is being or has been established for the purpose of marine farming and includes

* No. 16 of 1959. For this Act, as amended up to and including 1st August 1980, see the continuing Reprint of Statutes. Subsequently amended by No. 86 of 1980, No. 40 of 1981, Nos. 10, 39, 88, and 99 of 1982, Nos. 20, 29, and 40 of 1984, and by S.R. 1983, No. 99.

all structures and rafts used in connection with that area, all boundary markings for that area, and all fish and marine plants for the time being bred and reared or grown and harvested, as the case may be, in that area in accordance with a marine farm licence held under Division 3 of Part II;

“ marine farming ” means the breeding and rearing of any species of fish or the growing and harvesting of any species of marine plants;

“ marine plant ” includes any kind of plant that normally lives throughout its life in State fishing waters;

(d) by omitting “ subsection (3) of section 42E ” from the definition of “ marked ” and substituting “ section 42E (3) ”;

(e) by inserting the following definitions after the definition of “ marked ”:—

“ Minister ” wherever occurring in Parts I, II, and IIA means the Minister for Sea Fisheries, and wherever occurring in Part III means the Minister for Inland Fisheries;

“ Minister for Inland Fisheries ” means the Minister responsible for the administration of Part III;

“ Minister for Sea Fisheries ” means the Minister responsible for the administration of Parts II and IIA;

(f) by inserting the following definition after the definition of “ properly marked ”:—

“ raft ” means a floating platform, pontoon, barge, punt, or hulk which is not self-propelled and is moored for the purpose of providing buoyant support for the surfaces on which, or enclosures in which, fish are bred and reared or marine plants are grown and harvested;

(g) by inserting the following definition after the definition of “ salmon ”:—

“ structure ” means a platform, pontoon, jetty, building, dam, or trestlework, or any other erection constructed of rocks or other solid

material which has foundations in or on, or which is placed on, the sea bed within a marine farm;

(2) Section 3 of the Principal Act is further amended by omitting subsection (1A) and substituting the following subsection:—

(1A) The expression “ fish ” when used in, or in relation to, Divisions 1 and 2 of Part II does not include salmon or any other prescribed freshwater fish.

Amendment of section 8 of Principal Act (Powers of the Minister).

6—Section 8 of the Principal Act is amended as follows:—

(a) by omitting subsection (1) and substituting the following subsections:—

(1) The Minister has, subject to this Act, responsibility for the development of the fishing industry, and, except in relation to matters dealt with in Part III, the management, control, protection, and regulation of the fishing industry.

(1A) The Minister may grant a lease or permit under Division 3 in respect of a marine farm that is being or has been established for the breeding and rearing of salmon.

(b) by omitting from subsection (2) “ the time being administering this Act ” and substituting “ Sea Fisheries ”;

(c) by omitting from subsection (4) “ administering the *Fisheries Act 1959* ” and substituting “ for Sea Fisheries ”.

Insertion in Principal Act of new sections 8B and 8C.

7—The Principal Act is amended by inserting the following sections after section 8A:—

Annual report.

8B—(1) Subject to subsection (2), as soon as practicable after 30th June in each year, the Director shall submit to the Minister a report on the planning and operations of the Department of Sea Fisheries during the period of 12 months ending on that day, and, on receiving the report, the Minister shall cause a copy of it to be laid before each House of Parliament.

(2) As soon as practicable after 30th June 1985, the Director shall submit to the Minister a report on the fishing industry during the period of 12 months ending on that day, except in relation to matters dealt with in Part III.

8c—The Director shall consult with and advise the Commissioner of Police in relation to—

Consultation and co-operation with police.

- (a) the supervision of State fishing waters by members of the police force; and
- (b) any other matter that would, or may, prevent offences under Parts II and IIA being committed.

8—(1) Section 9 of the Principal Act is amended as follows:—

Amendment of section 9 of Principal Act (Regulations).

(a) by omitting paragraph (na) from subsection (1) and substituting the following paragraphs:—

- (na) prescribing standards with respect to fish, fish products, marine plants, or marine plant products;
- (nb) prohibiting or restricting, or placing conditions on, the sale of fish, fish products, marine plants, or marine plant products, in relation to their standard or quality;
- (nc) providing that persons engaged in, or premises used for, the cleaning, processing, manufacture, storage, packaging, or transport of fish, fish products, marine plants, or marine plant products, shall be licensed;
- (nd) providing that all persons who sell or offer for sale fish elsewhere than in a part of a building ordinarily used as a shop shall be licensed, and prohibiting the selling or offering for sale of fish by such persons without a licence;
- (ne) regulating the issue, form, terms, and conditions, duration, transfer, suspension, and cancellation of licences required under paragraph (nc) or (nd);
- (nf) prescribing the fees to be paid for those licences, and providing for the refund of those fees;

(b) by omitting from paragraph (tb) of subsection (1) “within the meaning of section 12”;

(c) by inserting the following paragraphs after paragraph (w) of subsection (1):—

(wa) requiring that—

(i) persons who hold marine farm licences under Division 3 of Part II shall ensure that any packages containing oysters or mussels that are taken pursuant to those licences, being packages consigned by those persons from the marine farms operated pursuant to those licences; and

(ii) persons who carry on the processing of oysters or mussels in premises registered under section 613 of the *Local Government Act 1962* shall ensure that any packages containing oysters or mussels that are processed in those premises, being packages consigned by those persons from those premises,

shall each bear a label approved by the Director and containing such particulars as are prescribed by the regulations;

(wb) requiring the keeping by persons referred to in paragraph (wa) of such records as are prescribed by the regulations;

(wc) requiring the making of returns and the giving of information with regard to matters arising in the fishing industry, other than matters referred to in paragraphs (va) and (w);

(2) Section 9 of the Principal Act is further amended by inserting the following subsection after subsection (1):—

(1AA) The Governor may make regulations providing for—

(a) the establishment of committees for the purpose of liaison between the Minister and persons engaged in activities within the fishing industry; and

- (b) the appointment of persons to those committees, and the terms and conditions of appointment of those persons, including payment of travelling and other allowances.

(3) Section 9 of the Principal Act is further amended by omitting subsection (1B) and substituting the following subsections:—

(1B) Regulations under this section with respect to the labels on packages containing oysters or mussels referred to in subsection (1) (*wa*) may make provision for or with respect to the size of those labels, the method of affixing those labels, the size, style, and colour of the particulars required to be contained on those labels, and the nature or colour of the background on which those particulars appear.

(1BA) Regulations under this section with respect to the keeping of records by persons referred to in subsection (1) (*wa*) may require those records to be kept by those persons for such period as is prescribed by the regulations and to be made available for inspection by officers of the Department of Sea Fisheries.

(1BB) Regulations under this section may, with respect to the matters to which they relate, authorize and regulate—

- (a) the entry and inspection of premises and conveyances used for the purposes of the fishing industry;
- (b) the entry of marine farms and other premises referred to in subsection (1) (*wa*) for the purpose of the inspection of the records referred to in subsection (1) (*wb*); and
- (c) the inspection and testing of any fish, fish products, marine plants, or marine plant products, and the seizure and disposal of fish, fish products, marine plants, or marine plant products so inspected or tested.

9—After section 10 of the Principal Act the following section is inserted:—

Insertion in
Principal Act
of new
section 11.

11—(1) There shall be a trust account under section 9 of the *Public Account Act 1957* to be known as the “Sea Fisheries Research Account”, into which shall be paid such moneys as Parliament may provide for the purpose.

Sea Fisheries
Research
Account.

(2) The Minister may, at his discretion, draw out money standing to the credit of the Sea Fisheries Research Account and cause it to be expended on matters connected with the fishing industry.

(3) For the purposes of subsection (2), the following matters are connected with the fishing industry:—

- (a) research into the fishing industry;
- (b) the education and advising of persons carrying out activities within the fishing industry;
- (c) publicizing research referred to in paragraph (a) and informing persons referred to in paragraph (b) of knowledge relevant to activities carried out by them, whether gained by such research or otherwise.

Insertion in Principal Act of new section 51A.

10—After section 51 of the Principal Act, the following section is inserted:—

Fish farm development committee.

51A—(1) There shall be a committee to be known as the Fish Farm Development Committee, consisting of the Commissioner and the Director.

(2) The Fish Farm Development Committee shall arrange for co-operation and consultation between the Department of Sea Fisheries and the Commission, on matters common to marine farming, salmon fisheries, and fisheries in inland waters.

Amendment of section 58 of Principal Act (Forfeiture of boats, appurtenances, &c., used in contravention of Act).

11—Section 58 of the Principal Act is amended by omitting “appointed under the Part the provisions of which have been contravened” and substituting “constituted under the Part under or in relation to which the contravention occurs”.

Amendment of section 60 of Principal Act (Disposal of perishable articles).

12—Section 60 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:—

(2) Subject to subsection (3), the Minister responsible for the administration of a Part under or in relation to which a contravention has occurred may authorize any boat or article seized under this Act in connection with that contravention to be delivered to the owner or other person disputing that seizure.

(3) The Minister may authorize a delivery under subsection (2) only if the owner or other person disputing the seizure gives security to the controlling body to pay the value of the goods so seized in case of their condemnation.

13—The Principal Act is amended as set out in Schedule 1.

Further amendments of Principal Act.

14—Section 29 of the *Crown Lands Act 1976* is amended by inserting the following subsection after subsection (2):—

Amendment of section 29 of *Crown Lands Act 1976* (Lease of Crown land).

(2A) The Minister may not grant a lease under this section for the purpose of breeding and rearing salmon within State fishing waters as defined in the *Fisheries Act 1959*.

15—Schedule 1 to the *Tasmanian State Service Act 1984* is amended as follows:—

Amendment of Schedule 1 to the *Tasmanian State Service Act 1984* (AGENCIES).

(a) by omitting from Division 2 of Part I the following item:—

Fisheries Department	The Chairman of the Fisheries Development Authority;
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(b) by omitting from Part II the following item:—

Fisheries Development Authority	The Chairman of the Fisheries Development Authority.
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16—(1) Where an action was commenced under section 8 (4) of the Principal Act by or against “The Minister administering the *Fisheries Act 1959*”, that action may be continued by or against “The Minister for Sea Fisheries”, as if commenced under the Principal Act as amended.

Transitional provisions.

(2) Where, under the Principal Act, anything was commenced by, or under the authority of, the Authority, that thing may be continued and completed as if commenced by, or under the authority of, the Director under the Principal Act as amended.

(3) Without in any way affecting the generality of subsection (2), an inquiry or investigation under section 23x of the Principal Act may be continued as if it were an inquiry or investigation commenced under section 23x of the Principal Act as amended.

(4) Any authorization in writing issued by the Authority under the Principal Act shall continue in force as if it were an authorization issued by the Director under the Principal Act as amended, until such time as it is revoked by the Director.

(5) An application made to, or a notice served on, the Authority under the Principal Act shall be dealt with by the Director as if it were an application made to, or a notice served on, the Director under the Principal Act as amended.

(6) A person shall comply or otherwise deal with a notice in writing served on him by the Authority under the Principal Act as if it were a notice served on him by the Director under the Principal Act as amended.

(7) In relation to any proceedings instituted in accordance with section 23N of the Principal Act, those proceedings may be continued as if instituted against the Director, in accordance with section 23N of the Principal Act as amended, and the Director shall be deemed to be a party to that appeal in place of the Authority.

(8) Where a magistrate has given a direction to the Authority under section 23N (4) of the Principal Act, the Director shall comply with that direction as if it were given under section 23N (4) of the Principal Act as amended.

(9) Where the period of time specified in section 23N (3) of the Principal Act for the institution of an appeal under that section has not expired before the commencement day, that appeal may be instituted under section 23N of the Principal Act as amended, as if it were an appeal against a decision of the Director.

(10) The period of time within which an appeal to which subsection (9) applies may be instituted shall be extended to include the period of 7 days commencing on and including the commencement day.

(11) Any steps prescribed by the Authority under regulations made in accordance with section 23ZA (2) (e) of the Principal Act shall be complied with as if they were steps prescribed by the Director under section 23ZA (2) (e) of the Principal Act as amended.

SCHEDULE 1

Section 13

AMENDMENTS OF THE PRINCIPAL ACT

Provision amended	Amendment
Section 3	(a) Insert " or Part IIA" in subsection (1A) after " Part II".
Section 8A	(b) Insert ", Part IIA," in subsection (2) after " Part II". (a) Omit from subsection (1) " Chairman of the Fisheries Development Authority ", substitute " Director ". (b) Omit from subsection (7) " Chairman of the Fisheries Development Authority " (wherever occurring), substitute " Director ".
Section 12	Omit from subsection (1) the definitions of " Authority ", " marine farm ", " marine farming ", " marine plant ", " raft ", and " structure ".
Section 23F	(a) Omit from subsection (1) " Authority ", substitute " Director ". (b) Omit from subsection (3) " Authority " (wherever occurring), substitute " Director ".
Section 23G	Omit " Authority ", substitute " Director ".
Section 23H	(a) Omit from subsection (1) " lease or permit ", substitute " licence ". (b) Omit from subsection (1) " Authority ", substitute " Director ". (c) Omit from subsection (2) (d) " Authority ", substitute " Director ".
Section 23J	(a) Omit from subsection (1) " Authority ", substitute " Director ". (b) Omit from subsection (2) " Authority ", substitute " Director ". (c) Omit from subsection (3) " Authority ", substitute " Director ". (d) Omit from subsection (4) " Authority ", substitute " Director ". (e) Omit from subsection (6) " Authority " (wherever occurring), substitute " Director ".
Section 23K	(a) Omit from subsection (1) " Authority ", substitute " Director ". (b) Omit from subsection (2) " Authority ", substitute " Director ".
Section 23L	Omit " Authority " (wherever occurring), substitute " Director ".
Section 23M	(a) Omit from subsection (1) " Authority ", substitute " Director ". (b) Omit from subsection (2) " Authority " (wherever occurring), substitute " Director ". (c) Omit from subsection (3) " Authority " (wherever occurring), substitute " Director ".

Provision amended	Amendment
	<p>(d) Omit from subsection (4) "Authority" (wherever occurring), substitute "Director".</p> <p>(e) Omit from subsection (6) "Authority", substitute "Director".</p>
Section 23N	<p>(a) Omit from subsection (1) (b) "Authority", substitute "Director".</p> <p>(b) Omit from subsection (4) "Authority" (wherever occurring), substitute "Director".</p> <p>(c) Omit from subsection (7) "Authority", substitute "Director".</p>
Section 23O	<p>(a) Omit from subsection (1) "Authority" (wherever occurring), substitute "Director".</p> <p>(b) Omit from subsection (2) "Authority" (wherever occurring), substitute "Director".</p>
Section 23P	Omit from subsection (3) "Authority", substitute "Director".
Section 23W	<p>(a) Omit from subsection (1) "Authority", substitute "Director".</p> <p>(b) Omit from subsection (4) "Authority" substitute "Director".</p>
Section 23X	<p>(a) Omit from subsection (1) "Authority" (wherever occurring), substitute "Director".</p> <p>(b) Omit from subsection (2) "Authority" (wherever occurring), substitute "Director".</p>
Section 23ZA	<p>(a) Omit from subsection (2) (e) "Authority", substitute "Director".</p> <p>(b) Omit subsection (2) (g).</p>
Section 33 (1)	Omit "consists", substitute "consist".
Section 50 (1)	After "Minister", insert "for Sea Fisheries or Inland Fisheries".
Section 51 (1)	After "Minister", insert "for Inland Fisheries".