
FISHERIES AMENDMENT (SEA FISHERIES) ACT 1988

No. 10 of 1988

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SCHEDULE 1

CONSEQUENTIAL AMENDMENTS



FISHERIES AMENDMENT (SEA FISHERIES) ACT 1988

No. 10 of 1988

AN ACT to amend the Fisheries Act 1959 and to consequentially amend the Fisheries Amendment (Marine Farming) Act 1982 and the Crown Lands Act 1976.

[Royal Assent 12 July 1988]

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 (Sea Fisheries) Act 1988*. Short title.

2—(1) Except as provided in subsection (2), this Act shall commence on the day on which it receives the Royal assent. Commencement.

(2) Sections 4 and 5 shall commence on such day as may be fixed by proclamation.

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

* No. 16 of 1959. For this Act, as amended up to and including 1st February 1987, see the continuing Reprint of Statutes.

Amendment of
section 9 of
Principal Act
(Regulations).

4—Section 9 of the Principal Act is amended as follows:—

(a) by omitting from paragraph (i) of subsection (1) “(other than scallops)”;

(b) by omitting subsections (3) to (7), inclusive.

Insertion in
Principal Act of
new section 9A.

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

Notices
temporarily
closing or
opening fisheries,
&c.

9A—(1) The Minister may, by notice published in a newspaper circulating generally in Tasmania, make temporary provision—

(a) prohibiting or restricting the taking of fish otherwise permitted by regulations in force under section 9 (in this section referred to as “the regulations”); or

(b) permitting, with or without conditions, the taking of fish otherwise prohibited or restricted by the regulations,

for such period as is specified in the notice.

(2) The period specified in a notice under subsection (1) shall—

(a) commence not earlier than the day immediately succeeding the day on which the notice is published, or first published, in accordance with that subsection; and

(b) not exceed 12 weeks in duration.

(3) A notice under subsection (1)—

(a) has effect notwithstanding anything to the contrary in the regulations; and

(b) may be made to apply—

(i) to State fishing waters generally or to any specified State fishing waters; and

(ii) to fish generally or to any specified species or kind of fish.

(4) A person who takes fish in contravention of a notice under subsection (1) is guilty of an offence against this subsection.

(5) A person who is guilty of an offence against subsection (4) is liable, upon conviction—

(a) to a fine of not less than 0.4, and not more than 10, penalty units in respect of a first offence;

(b) to a fine of not less than 1, and not more than 15, penalty units in respect of a second offence; and

(c) to a fine of not less than 2, and not more than 20, penalty units in respect of a third or subsequent offence.

(6) A notice under subsection (1) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

6—Section 12 of the Principal Act is amended as follows:—

(a) by inserting after the definition of “permit” in subsection (1) the following definition:—

Amendment of section 12 of Principal Act (Interpretation of Division 3 of Part II).

“re-seeding lease” means a lease referred to in section 15 (1A), and in force under this Division.

(b) by adding at the end the following subsection:—

(2) For the purposes of this Division—

(a) a lease granted under section 12 or 13 of this Act (as in force on 9th March 1983) and in force on that day shall be deemed to have been granted as a lease under section 19 of this Act (as in force on and after 10th March 1983) for the remainder of the period for which it was granted under the first-mentioned section; and

(b) a lease granted under section 29 of the *Crown Lands Act 1976* of an area of State fishing waters for the purpose of marine farming and in force on 12th November 1985 shall be deemed to have been granted as a permit under section 19 of this Act (as in force on and after 13th November 1985) for the remainder of the period for which it was granted under section 29 of the *Crown Lands Act 1976*.

Amendment of
section 15 of
Principal Act
(Authority of
leases, re-seeding
leases, and
permits).

7—Section 15 of the Principal Act is amended as follows:—

(a) by inserting after subsection (1) the following subsection:—

(1A) A re-seeding lease, while it is in force—

(a) confers on the holder of the re-seeding lease exclusive possession of the area of seabed to which the re-seeding lease relates for the purpose of the culture, and subsequent harvesting, of fish (in this subsection referred to as “specified fish”), being fish of the kind specified in a marine farm licence for the time being held by the holder of the re-seeding lease and in force in relation to the area of seabed to which the re-seeding lease relates; and

(b) prohibits the carrying on of any activity in the waters above that seabed that in any way interferes with the culture of specified fish in that area of seabed, and, for the purposes of paragraph (b), it is declared that the use by recreational fishermen of hand lines for the taking of swimming fish or of crayfish-pots for the taking of crayfish at times other than those during which operations connected with the culture of specified fish in that area of seabed are being undertaken does not constitute an interference with that culture.

(b) by omitting subsection (3) and substituting the following subsection:—

(3) The decision whether a lease, re-seeding lease, or permit is the appropriate instrument to be granted in any particular case is in the discretion of the Minister and, without limiting that discretion—

(a) subject to paragraph (c), where—

(i) the application relates to shallow or inshore waters; and

(ii) substantial use is intended to be made, in marine farming to be carried on in those waters, of the bed of the waters,

a lease is the appropriate instrument to be granted;

(b) where—

(i) the application relates to deeper waters; and

(ii) it is intended to conduct marine farming from a raft or structure, either anchored or moored, without substantial use being intended to be made of the bed of those waters,

a permit is the appropriate instrument to be granted; and

(c) where the application relates to the culture, by way of the technique known as re-seeding, of fish of a species declared by regulation under section 23ZA to be a re-seeding species, a re-seeding lease is the appropriate instrument to be granted.

8—The Principal Act is amended as set out in Schedule 1. Consequential amendments of Principal Act.

9—Section 6 of the *Fisheries Amendment (Marine Farming) Act 1982* is repealed. Amendment of Fisheries Amendment (Marine Farming) Act 1982.

10—Section 29 of the *Crown Lands Act 1976* is amended by omitting subsection (2A) and substituting the following subsection:— Amendment of Crown Lands Act 1976.

(2A) The Minister may not grant a lease under this section in respect of an area of State fishing waters as defined in the *Fisheries Act 1959* for a purpose for which a lease, re-seeding lease, or permit could be issued under Division 3 of Part II of that Act.

11—(1) The Director shall, as soon as practicable after the commencement of this Act, issue to the holder of a lease referred to in section 12 (2) (b) of the Principal Act (as amended by this Act) a marine farm licence under section 23E of the Principal Act. Transitional.

(2) The holder of a lease referred to in subsection (1) is, by virtue of this subsection, authorized to carry on marine farming from the commencement of this Act until the Director issues to him a marine farm licence pursuant to subsection (1) and shall be taken to have been so authorized during the period that commenced on 13th November 1985 and ended immediately before that commencement.

(3) Until provision in respect of the prescribed fees payable in connection with matters relating to re-seeding leases is made by regulation under Division 3 of Part II of the Principal Act as amended by this Act, a reference in Schedule 1 to the *Marine Farm Regulations 1984* to leases has effect as if it included a reference to re-seeding leases.

SCHEDULE 1

Section 8

CONSEQUENTIAL AMENDMENTS

1. Section 13 (a)—

Omit “lease or permit,” and substitute “lease, re-seeding lease, or permit,”.

2. Section 14 (1)—

Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

3. Section 16 (1)—

Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

4. Section 16 (2)—

Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

5. Section 17 (1)—

Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

6. Section 17 (1) (a)—

Omit “lease,” (twice occurring) and substitute “lease or re-seeding lease,”.

7. Section 18 (1)—

Omit “lease,” and substitute “lease or re-seeding lease,”.

8. Section 18 (3)—

Omit “permit:—” and substitute “permit or re-seeding lease:—”.

9. Section 19 (1)—

Omit “lease or permit—” and substitute “lease, re-seeding lease, or permit—”.

10. Section 19 (2)—

Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

11. Section 19 (3)—

Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

12. Section 19 (5)—

Omit “lease or permit,” and substitute “lease, re-seeding lease, or permit,”.

13. Section 19 (6)—

Omit “lease” (twice occurring) and substitute “lease or re-seeding lease”.

14. Section 20 (1)—

Omit “lease or permit” (twice occurring) and substitute “lease, re-seeding lease, or permit”.

15. Section 20 (2)—

Omit “lease or permit” (twice occurring) and substitute “lease, re-seeding lease, or permit”.

16. Section 21—

Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

17. Section 22 (1)—

Omit “lease or permit” (thrice occurring) and substitute “lease, re-seeding lease, or permit”.

18. Section 22 (2)—

Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

19. Section 22 (3)—

Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

20. Section 22 (4)—

Omit “lease or permit” (5 times occurring) and substitute “lease, re-seeding lease, or permit”.

21. Section 22 (5)—

Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

22. Section 23 (1)—

Omit “lease or permit” (thrice occurring) and substitute “lease, re-seeding lease, or permit”.

23. Section 23 (2)—

Omit “lease or permit” (twice occurring) and substitute “lease, re-seeding lease, or permit”.

24. Section 23A—

Omit “lease or permit” (4 times occurring) and substitute “lease, re-seeding lease, or permit”.

25. Section 23B (1)—

Omit “a lease or permit” and substitute “a lease, re-seeding lease, or permit”.

26. Section 23B (1) (a)—

Omit “lease” and substitute “lease or re-seeding lease”.

27. Section 23B (1) (b)—

(a) Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

(b) Omit “lease relates” and substitute “lease or re-seeding lease relates”.

28. Section 23B (1) (c)—

(a) Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

(b) Omit "lease relates" and substitute "lease or re-seeding lease relates".

29. Section 23B (2)—

Omit "lease or permit" and substitute "lease, re-seeding lease, or permit".

30. Section 23B (2) (b)—

Omit "permit" (thrice occurring) and substitute "permit or re-seeding lease".

31. Section 23B (4)—

Omit "lease or permit" and substitute "lease, re-seeding lease, or permit".

32. Section 23B (4) (b)—

Omit "permit" (twice occurring) and substitute "permit or re-seeding lease".

33. Section 23B (5)—

Omit "lease or permit" (twice occurring) and substitute "lease, re-seeding lease, or permit".

34. Section 23B (6)—

Omit "lease or permit" (twice occurring) and substitute "lease, re-seeding lease, or permit".

35. Section 23B (7)—

Omit "lease or permit" (thrice occurring) and substitute "lease, re-seeding lease, or permit".

36. Section 23C (1)—

Omit "lease or permit" (4 times occurring) and substitute "lease, re-seeding lease, or permit".

37. Section 23C (2)—

Omit "lease or permit" and substitute "lease, re-seeding lease, or permit".

38. Section 23C (3) (a)—

Omit "lease" (twice occurring) and substitute "lease or re-seeding lease".

39. Section 23C (3) (b)—

Omit "lease" and substitute "lease or re-seeding lease".

40. Section 23C (3) (c)—

Omit “lease,” and substitute “lease or re-seeding lease.”.

41. Section 23C (3)—

Omit “lease or application” and substitute “lease, re-seeding lease, or application”.

42. Section 23C (5)—

Omit “lease or permit” (6 times occurring) and substitute “lease, re-seeding lease, or permit”.

43. Section 23C (6)—

Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

44. Section 23C (9)—

Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

45. Section 23D (1)—

Omit “lease or permit” (4 times occurring) and substitute “lease, re-seeding lease, or permit”.

46. Section 23D (2)—

Omit “lease or permit” (4 times occurring) and substitute “lease, re-seeding lease, or permit”.

47. Section 23D (3)—

Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

48. Section 23D (4)—

Omit “lease or permit” (5 times occurring) and substitute “lease, re-seeding lease, or permit”.

49. Section 23E (1)—

Omit “lease” and substitute “lease or re-seeding lease”.

50. Section 23E (3)—

Omit “lease” and substitute “lease or re-seeding lease”.

51. Section 23E (4)—

Omit “lease” and substitute “lease or re-seeding lease”.

52. Section 23F (1)—

(a) Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

(b) Omit “the lease” and substitute “the lease or re-seeding lease”.

53. Section 23F (2) (b)—

Omit “lease” and substitute “lease or re-seeding lease”.

54. Section 23J (4)—

Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

55. Section 23P (1)—

Omit “lease or permit” (twice occurring) and substitute “lease, re-seeding lease, or permit”.

56. Section 23P (2)—

Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

57. Section 23P (3)—

(a) Omit “lease or permit” (twice occurring) and substitute “lease, re-seeding lease, or permit”.

(b) Omit “that lease” and substitute “that lease or re-seeding lease”.

58. Section 23Q (1)—

(a) Omit “lease or permit” and substitute “lease, re-seeding lease, or permit”.

(b) Omit “the lease and” and substitute “the lease or re-seeding lease and, in the case of a lease,”.

59. Section 23Q (2)—

(a) Omit “a lease” and substitute “a lease or re-seeding lease”.

(b) Omit “the lease or permit” (thrice occurring) and substitute “the lease, re-seeding lease, or permit”.

60. Section 23T (1) (a) (i)—

Omit “lease” and substitute “lease or re-seeding lease”.

61. Section 23T (2)—

Omit “lease” (twice occurring) and substitute “lease or re-seeding lease”.

62. Section 23U (a)—

Omit “lease” and substitute “lease or re-seeding lease”.

63. Section 23V—

Omit “lease” and substitute “lease or re-seeding lease”.

64. Section 23W (1) (b)—

Omit “lease,” and substitute “lease, re-seeding lease,”.

65. Section 23ZA (2) (a)—

Omit “leases,” and substitute “leases, re-seeding leases,”.

66. Section 23ZA (2) (h)—

Omit “lease” and substitute “lease or re-seeding lease”.

67. Section 23ZA (2) (j)—

Omit “leases,” (twice occurring) and substitute “leases, re-seeding leases,”.

