

FISHERIES ORDINANCE 1972

1123

No. 35 of 1972

An Ordinance to amend the *Fisheries Ordinance 1965-1967*

[Assented to 31 July, 1972]

BE it ordained by the Legislative Council for the Northern Territory of Australia as follows:—

1.—(1.) This Ordinance may be cited as the *Fisheries Ordinance 1972*.

Short title
and citation

(2.) The *Fisheries Ordinance 1965-1967* is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance as amended by this Ordinance may be cited as the *Fisheries Ordinance 1965-1972*.

2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.*

Commencement

3. Section 4 of the Principal Ordinance is amended by omitting the word "Oyster" and inserting in its stead the word "Fish".

Parts

4. Section 5 of the Principal Ordinance is amended by omitting sub-section (1.) and inserting in its stead the following sub-section:—

Interpretation

"(1.) In this Ordinance, unless the contrary intention appears—

'appropriate licence' means in a particular section of this Ordinance such of the licences described in section 15 of this Ordinance as is appropriate to the kind of activity regulated by that particular section;

'boat' includes a barge, punt, vessel or floating craft of any description;

'cast net' means a hand-cast net of the umbrella type;

'controlled species' means a species of fish declared to be a controlled species under section 14 of this Ordinance;

* The date fixed was 1 January, 1973 (see *Northern Territory Government Gazette* No. 51 of 20 December, 1972, page 460).

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- 'exempt net' means a net exempted under sub-section (2.) of section 44 of this Ordinance;
- 'fish' includes all animal aquatic organisms and their eggs, fry and larvae but does not include birds, whales, pearl oysters, trochus, green snails, beche de mer or crocodiles;
- 'handline' means a fishing line to which is attached not more than two hooks and which is either held in the hand (whether a rod be used or not) or is trolled whilst it is being used;
- 'inland waters' means all lakes, lagoons, billabongs and watercourses whether of fresh, salt or brackish water;
- 'inspector' means an Inspector of Fisheries within the meaning of section 6 of this Ordinance and includes the Chief Inspector;
- 'licensed fisherman' means the holder of a licence that is in force under section 15 of this Ordinance;
- 'line' means a fishing line of any material not being a handline;
- 'net' means a fabric rope, cord, twine, nylon or other material, knotted or woven into meshes and designed or fitted to take fish and includes all tackle and furniture provided for use or used in connexion therewith;
- 'pot' means any portable device used for taking fish which is not used in the hand but which is constructed of meshed material over a framework such that it encloses a volume not greater than fifty-five cubic feet and has not more than two openings into any enclosure;
- 'prescribed purpose' in relation to the taking of fish by a person means a trading, commercial or manufacturing purpose, but does not include a purpose of recreation for that person or of using the fish so taken directly by that person or his dependants;
- 'process' in relation to fish means prepare fish for sale or for use as raw material in manufacture or in connexion with a project of research, investigation or industrial development and includes cut up, dismember, clean, sort, pack, preserve, store or transport for any of those purposes, and 'processed' and 'processing' have corresponding meanings;

'prohibited size', in relation to fish of any species, means a size less than the size specified in a notice published under section 14 of this Ordinance as the minimum size of that species which may be taken;

'prohibited species' means a species of fish specified in a notice published under section 14 of this Ordinance as being fish of a species the taking of which is prohibited;

'scoop net' means a net which is attached to a frame, hoop or ring and is designed for use in the hand only;

'sell' includes—

- (a) agree to sell;
- (b) offer or expose for the purpose of selling;
- (c) have in possession for the purpose of selling;
- and
- (d) barter or exchange,

and 'sale' and 'sold' have corresponding meanings;

'take' means to take into or to have in possession or control and includes engaging in the setting or placing of a net or any other device or trap capable of taking fish;

'the Chief Inspector' means the Chief Inspector of Fisheries appointed under section 6 of this Ordinance;

'trap' includes any device used for or capable of taking fish which—

- (a) is fixed in place whether temporarily or not;
- (b) is constructed of meshed material such that the perimeter of each mesh is not less than eight inches or, if not quadrilateral mesh, the sides of each mesh are not less than one and one-half inches;
- (c) is not constructed for use in the hands; and
- (d) is not a net licensed under this Ordinance;

'watercourse' means a river, stream, creek or natural channel along which water flows permanently, intermittently or occasionally;

'waters' means waters of the Northern Territory being the sea and inland waters and includes the bed of any such waters."

5. Section 8 of the Principal Ordinance is amended—

- (a) by inserting in sub-section (1.) after the words

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“duties of”, the words “, and the same protection at law in relation to the exercise or performance of those powers and duties as,”;

(b) by omitting paragraph (b) of sub-section (2.) and inserting in its stead the following paragraphs:—

“(b) board, enter and search any building (not being a dwelling house) boat or vehicle that he has reason to believe has been, is being or is intended to be used for the taking or processing of fish;

“(ba) examine any plant, appliances, motor, fish, net, trap or equipment that he has reason to believe has been used, is being used or is intended to be used, for the taking or processing of fish;

“(bb) seize, take, detain, remove or secure any boat, plant, motor designed for use in a boat, appliance, fitting, gear, tackle, fish, net, trap or equipment, whether in, on or attached to a boat or not, that he has reason to believe has been taken or used or is being or is intended to be used in contravention of this Ordinance;” and

(c) by adding after sub-section (2.) the following sub-section:—

“(3.) The power of entry and search conferred on an inspector under the last preceding sub-section may be exercised only—

(a) if the inspector has previously requested access to or inspection of the contents of the building, boat or vehicle and that access or inspection has been refused or has not been afforded; or

(b) if there is no one present who is apparently the owner or a person in charge of the building, boat or vehicle.”.

6. Section 10 of the Principal Ordinance is repealed.

Reserves

7. Section 12 of the Principal Ordinance is amended by omitting from sub-section (2.) the word “fishing” (wherever occurring) and inserting in its stead the words “the taking of fish”.

Closure of waters

8. Section 13 of the Principal Ordinance is amended by omitting the word “fishing” (wherever occurring) and inserting in its stead the words “the taking of fish”.

9. Section 14 of the Principal Ordinance is amended by omitting paragraph (d) of sub-section (1.) and inserting in its stead the following paragraphs:—

Prohibited area

- “(d) fix in respect of estuaries and estuarine rivers and creeks a line upstream from which the taking of fish otherwise than by handline, a pot used by a person who is exempted from the provisions of sub-section (1A.) of section 44 of this Ordinance, a hand spear, a scoop net or a cast net or for the purpose of fish culture is prohibited;
- (e) fix the maximum number of pots to be used by a fisherman for any or all purposes or a specified purpose or generally or in a specified area;
- (f) declare any species of fish to be a controlled species;
- (g) determine the number of licences included in a specified class of licence that may be issued by the Chief Inspector under section 15 of this Ordinance;
- (h) determine the number of licences included in a specified class of licence that may be issued in respect of a specified area of the Territory or the waters of the Territory;
- (i) declare an area of land or waters to be an area in which possession by a person of—
 - (i) nets, traps or other equipment capable of taking fish, being nets, traps or equipment of a kind specified in the declaration; or
 - (ii) equipment capable of cooling or freezing fish, being equipment of a kind so specified,
 is prohibited.”.

10. Sections 15 and 16 of the Principal Ordinance are repealed and the following sections inserted in their stead:—

“15.—(1.) Subject to this Ordinance, the Chief Inspector may, on application as prescribed, grant to a person a licence authorizing the holder to engage in such of the following activities as is specified in the licence:—

Licences

- (a) the taking of fish for prescribed purposes by trawling;
- (b) the taking of fish for prescribed purposes by netting or by means other than trawling or the use of pots;
- (c) the taking of fish by the use of pots;

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- (d) the taking of fish for the purpose of sale as live fish for ornamental purposes or for fish culture;
- (e) the hiring of boats to be used in the taking of fish for prescribed purposes;
- (f) the processing of fish for a prescribed purpose;
- (g) the buying or selling of fish by wholesale or retail;
- (h) the culture or farming of fish;
- (i) subject to any other law in force in the Territory relating to boats, the use of a boat in the taking of fish; or
- (j) the use of a boat for the transport only of fish.

“(2.) The Chief Inspector shall not grant a licence under this section to a person who—

- (a) is under the age of eighteen years;
- (b) has, during the period of twelve months immediately preceding the date of the application for the licence, been convicted of an offence against a provision of this Ordinance or the regulations; or
- (c) is not eligible for the grant of a licence under the *Fisheries Act 1952-1970*, has been refused such a licence or has held such a licence that has been cancelled by reason of a contravention of that Act.

“(3.) A licence granted under this section—

- (a) is subject to such conditions as are specified in the licence;
- (b) shall contain a condition that the licensee shall not knowingly permit a boat, gear or equipment in respect of which he is licensed to be used for the taking of fish by a person who is not licensed;
- (c) comes into force on a date specified in the licence or, if no date is so specified, on the date on which it is granted; and
- (d) subject to the next succeeding sub-section, remains in force until the next succeeding thirty-first day of December.

“(4.) Where a licence granted under this section comes into force during the month of December in any year, it remains in force until the thirty-first day of December in the succeeding year.

“(5.) The Chief Inspector may, in his discretion, on the application of the holder of a licence granted under this section,

or of another person as proposed transferee, transfer the licence to that other person.

“15A.—(1.) Where a person is convicted of an offence against a provision of this Ordinance or the regulations, any licence held by him under this Ordinance is, by the conviction, cancelled. Cancellation of licence

“(2.) Where a person is the holder of a licence under this Ordinance and a licence under the *Fisheries Act 1952-1970* and the licence under that Act is cancelled by reason of a contravention of that Act, a licence held by him under this Ordinance is, on that cancellation, cancelled.

“(3.) Where the Chief Inspector is satisfied—

- (a) that there has been a contravention or failure to comply with a condition of a licence granted under this Ordinance; or
- (b) such a licence was granted on an application that contained a statement that was misleading or false in a material particular,

the Chief Inspector may cancel any such licence held by that person.

“(4.) Where the Chief Inspector cancels a licence in pursuance of the last preceding sub-section, the person aggrieved may, within the period of fourteen days after the cancellation, appeal against the cancellation to a Local Court.

“(5.) The Local Court shall, on the hearing of an appeal, by order—

- (a) if it is satisfied that the Chief Inspector had reasonable grounds for the cancellation—confirm the cancellation; or
- (b) if it is not so satisfied—annul the cancellation and restore the licence.

“(6.) Where fish in the possession or control of the holder of a licence under this Ordinance has, during the period of the licence, been condemned on two separate occasions under section 21 of this Ordinance, a licence held under this Ordinance by that person is, on that second occasion, cancelled.

“(7.) Where a licence held by a person is cancelled under sub-section (1.) or (3.) of this section, that person is not eligible for the grant of a licence under this Ordinance for a period of three years after the cancellation.

“(8.) Where a licence held by a person is cancelled by virtue of sub-section (2.) of this section, that person is not

eligible for the grant of a licence under this Ordinance for a period of twelve months after the date of the cancellation.

“(9.) Where a licence held by a person is cancelled by virtue of sub-section (4.) of this section, that person is not eligible for the grant of a licence under this Ordinance for a period of two years after the date of cancellation.

Renewal of
licences

“15B.—(1.) Subject to this Ordinance, the Chief Inspector may renew a licence granted under this section as from the date of expiry of the licence and the renewed licence shall remain in force until the thirty-first day of December next after that date.

“(2.) The Chief Inspector shall not renew a licence granted to a person under section 15 of this Ordinance unless he is satisfied that—

- (a) not less than half of the gross income of that person that he earned by personal exertion during the period of the licence was derived from the taking or processing of fish; or
- (b) the gross income so derived from the taking or processing of fish amounted to not less than Three thousand dollars,

but this sub-section shall not prevent renewal of a licence by the Chief Inspector where he is satisfied that that person failed to comply with the provisions of paragraph (b) of this sub-section by reason only of accident, misfortune or a cause beyond the control of that person.

“(3.) The Chief Inspector may require a person applying for the renewal of a licence to furnish to him such documents, papers and other records as the Chief Inspector considers necessary for the purposes of the last preceding sub-section.

“(4.) The Chief Inspector shall not renew a licence granted under section 15 of this Ordinance if he is satisfied that the holder of the licence has, during the period of the licence, knowingly permitted his boat, gear or equipment in respect of which he is licensed to be used for the taking of fish by a person who is not licensed.

Fish not to be
taken except
under licence

“16. Subject to this Ordinance, a person shall not engage in an activity described in section 15 of this Ordinance unless he is the holder of a licence under that section authorizing him to engage in that activity.

Penalty: Four hundred dollars or imprisonment for six months.”.

Register of
licences, &c.

11. Section 18 of the Principal Ordinance is amended by omitting sub-sections (3.), (4.) and (5.).

12. The heading to Part V. of the Principal Ordinance is repealed and the following heading inserted in its stead:—

Heading to Part V

“PART V.—FISH CULTURE.”.

13. Section 22 of the Principal Ordinance is amended—

Definition

(a) by inserting after the definition of “Crown lands” the following definition:—

“‘fish’ includes all animal aquatic organisms and their eggs, fry and larvae but does not include pearl oysters or pearl shell;” and

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

“‘sedentary organisms’ means fish of all sorts which are not free swimming in the adult stage.”.

14. Section 23 of the Principal Ordinance is amended by omitting the word “oysters” and inserting in its stead the word “fish”.

Applications for leases

15. Section 25 of the Principal Ordinance is amended by omitting the word “oysters” and inserting in its stead the word “fish”.

Grant of leases

16. Section 26 of the Principal Ordinance is amended by omitting the word “oysters” (twice occurring) and inserting in its stead the word “fish”.

Rights conferred by lease

17. Section 27 of the Principal Ordinance is amended by omitting the word “oysters” and inserting in its stead the words “sedentary organisms”.

Surrender

18. Section 30 of the Principal Ordinance is amended by omitting the word “oysters” and inserting in its stead the word “fish”.

Improvements become the property of the Crown upon expiry

19. Section 33 of the Principal Ordinance is amended by omitting the word “oysters” (twice occurring) and inserting in its stead the word “fish”.

Suspension of lease

20. Section 34 of the Principal Ordinance is amended by omitting the word “oysters” (wherever occurring) and inserting in its stead the word “fish”.

Offences

21. The Principal Ordinance is amended by inserting after section 37 the following section:—

“37A.—(1.) The Chief Inspector may issue to a person or to a person on behalf of an authority, institution, association or

Fish for scientific purposes

group of persons a licence for that person or the authority, institution, association or group to take fish for the purposes of scientific research or investigation into the fauna of the Northern Territory.

“(2.) Subject to the conditions and restrictions contained in the licence being complied with, the provisions of this Ordinance do not apply to the taking of fish under the licence.”

22. Section 38 of the Principal Ordinance is repealed and the following section inserted in its stead:—

Persons not to fish in fresh-water except with handline

“38. A person shall not take fish except for fish culture in inland waters or upstream from or landward of a line determined by the Administrator in Council under section 14 of this Ordinance except—

(a) by the use of a handline, a hand spear, a scoop net or a cast net; or

(b) if the person is a person exempted from the provisions of sub-section (1A.) of section 44 of this Ordinance, by the use of a pot.

Penalty: Four hundred dollars or imprisonment for six months.”

23. The Principal Ordinance is amended by inserting after section 38 the following section:—

Possession of nets, &c. in declared areas

“38A.—(1.) A person shall not be in possession in an area declared under paragraph (i) of sub-section (1.) of section 14 of this Ordinance of a net, trap or equipment of a kind specified in the declaration made under that paragraph with respect to that area.

Penalty: Two hundred dollars or imprisonment for six months.

“(2.) It is a defence to any prosecution for an offence under this section if the defendant establishes to the satisfaction of the court that at the time of the possession the subject of the charge, the net, trap or other equipment was on a vehicle or boat and that he was passing through the declared area and had not taken fish and was not proposing to take fish in the declared area.

“(3.) Where a person is convicted of an offence under this section that conviction shall operate to forfeit the nets, traps or equipment the subject of the charge to Her Majesty.”

Only licensed fisherman to use nets

24. Section 44 of the Principal Ordinance is amended by omitting sub-sections (1.) and (2.) and inserting in their stead the following sub-sections:—

“(1.) A person who is not the holder of an appropriate licence shall not use a net other than a scoop net, cast net or exempt net for the purpose of taking fish.

Penalty: Four hundred dollars.

“(1A.) A person other than a person exempted under the next succeeding sub-section shall not use a pot to take fish unless he is the holder of a licence under section 15 of this Ordinance authorizing that use.

Penalty: Two hundred dollars.

“(2.) The Chief Inspector may, by instrument in writing—

(a) upon the application of a person who owns or proposes to acquire a net exempt the net from the operation of sub-section (1.) of this section; and

(b) exempt a person from the operation of sub-section (1A.) of this section,

upon such conditions and for such period as are specified in the instrument of exemption.

“(2A.) It is a defence to a prosecution for an offence against sub-section (1A.) of this section where the prosecution relates to the use of one pot if the defendant satisfies the court that he was using the pot for the purpose of catching fish for food for his domestic consumption.”.

25. Section 46 of the Principal Ordinance is amended by omitting sub-section (7.). Fishtraps

26. Section 48 of the Principal Ordinance is amended by omitting from paragraph (a) the word “used” and inserting in its stead the words “or any boat, plant, motor, appliance, fitting, gear or equipment, whether in, on or attached to a boat or otherwise, that has been used, or is intended to be used, for the taking or processing of fish”. Forfeitures

27. Section 49 of the Principal Ordinance is amended— Condemnation

(a) by inserting in sub-section (1.), after the word “device” (first occurring) the words “or a boat, plant, motor appliance, fitting, gear or equipment,”; and

(b) by omitting from that sub-section the words “the use or possession of the net, trap or device” and inserting in their stead the words “its use or possession”.

28. Section 52 of the Principal Ordinance is amended by omitting the word “may” and inserting in its stead the word “shall”. Claim to be made to Chief Inspector

29. After section 57 of the Principal Ordinance the following section is inserted:—

Evidentiary
provision

“57A. In a prosecution for an offence against this Ordinance, evidence that fish, net, trap or equipment, was found in the possession of a person in a boat or in or near to waters of the Territory is evidence that the fish had been taken by use of that net, trap or equipment and for a prescribed purpose.”.

Regulations

30. Section 59 of the Principal Ordinance is amended—

(a) by omitting paragraph (h) and inserting the following paragraph in its stead:—

“(h) the methods of marking nets, pots, traps and equipment the use of which is licensed or permitted under this Ordinance;”;

(b) by inserting after paragraph (k) the following paragraphs:—

“(ka) determining the place in which, and the conditions under which, a controlled species may be processed;

“(kb) fixing a limit to the quantity or number of either fish or fish of a particular species which a person may take either for a prescribed purpose or for other purposes.”.
