



STATUTES AMENDMENT (FISHERIES) ACT 1993

No. 31 of 1993

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ANNO QUADRAGESIMO SECUNDO

ELIZABETHAE II REGINAE

A.D. 1993

No. 31 of 1993

An Act to amend the Fisheries Act 1982 and the Fisheries (Southern Zone Rock Lobster Fishery Rationalization) Act 1987.

[Assented to 6 May 1993]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Fisheries) Act 1993*.

Commencement

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

Interpretation

3. A reference in this Act to "the principal Act" is a reference to the Act referred to in the heading to the Part in which the reference occurs.

PART 2
AMENDMENT OF FISHERIES ACT 1982

Amendment of long title

4. The long title to the principal Act is amended by inserting “marine mammals and” after “protection of” second occurring.

Amendment of s. 5—Interpretation

5. Section 5 of the principal Act is amended—

(a) by inserting before the definition of “aquatic reserve” in subsection (1) the following definition:

“abalone” means abalone (*Haliotis* spp.) of all species;;

(b) by inserting after the definition of “aquatic reserve” in subsection (1) the following definition:

“Australian fishing zone” means the Australian fishing zone as defined in the Commonwealth Act;;

(c) by striking out the definitions of “Commonwealth Act” and “Commonwealth proclaimed waters” in subsection (1) and substituting the following definition:

“Commonwealth Act” means the *Fisheries Management Act 1991* of the Commonwealth as amended from time to time or any Act enacted in substitution of that Act;;

(d) by inserting after the definition of “fishery licence” in subsection (1) the following definition:

“fishery management committee” means a management committee established in respect of a fishery by the regulations;;

(e) by inserting after the definition of “foreign boat” in subsection (1) the following definition:

“marine mammal” means a seal or sea lion (order Pinnipedia) or a dolphin or whale (order Cetacea);;

(f) by striking out from subsection (6)(b) “Commonwealth proclaimed waters” and substituting “within the Australian fishing zone”;

(g) by striking out paragraph (d) of subsection (6) and substituting the following paragraph:

(d) for purposes relating to recreational fishing activities engaged in otherwise than by use of a foreign boat other than recreational fishing activities prohibited or regulated under a plan of management determined under section 17 of the Commonwealth Act—in relation to any waters to which the legislative powers of the State extend with respect to such activities.

Amendment of s. 6—Interpretation

6. Section 6 of the principal Act is amended—

(a) by striking out “section 12C” from the definition of “Commonwealth Minister” and substituting “section 60”;

- (b) by striking out the definition of "Joint Authority" and substituting the following definition:

"Joint Authority" means a Joint Authority established under section 61 of the Commonwealth Act of which the Minister is a member;.

Amendment of s. 7—Powers and functions of Minister

7. Section 7 of the principal Act is amended—

- (a) by striking out from subsection (1) "Part IVA" and substituting "Part 5";
- (b) by striking out from subsection (2) "Part IVA" and substituting "Part 5".

Amendment of s. 10—Delegation

8. Section 10 of the principal Act is amended by striking out subsection (5) and substituting the following subsection:

(5) A delegation of a power under this section—

- (a) may be revoked, by instrument in writing, by the Joint Authority (whether or not constituted by the persons constituting the Joint Authority at the time the power was delegated);

and

(b) continues in force despite any change in the membership of the Joint Authority.

Amendment of s. 11—Procedure of Joint Authorities

9. Section 11 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) Sections 66 to 68 (inclusive) of the Commonwealth Act apply to and in relation to the performance by a Joint Authority of its functions under this Act.

Amendment of s. 12—Report of Joint Authority

10. Section 12 of the principal Act is amended by striking out "section 12G" and substituting "section 70".

Amendment of s. 13—Arrangement for management of certain fisheries

11. Section 13 of the principal Act is amended by striking out from subsection (1) "section 12J" and "section 12H" and substituting, respectively, "section 74" and "section 71 or 72".

Substitution of s. 14

12. Section 14 of the principal Act is repealed and the following section is substituted:

Application of this Act to fisheries in accordance with arrangements

14. Where there is in force an arrangement that provides that a particular fishery is to be managed in accordance with the law of the State, the provisions of this Act apply to and in relation to the fishery except that those provisions do not apply to or in relation to that fishery in respect of foreign boats, operations on and from foreign boats or persons on foreign boats or in relation to matters that occurred before the arrangement took effect.

Amendment of s. 15—Functions of Joint Authority

13. Section 15 of the principal Act is amended by inserting after its present contents (to be designated as subsection (1)) the following subsection:

(2) A Joint Authority has the following objectives in the performance of its functions under subsection (1):

(a) ensuring, through proper conservation, preservation and fisheries management measures, that the living resources of the waters to which this Act applies are not endangered or overexploited;

and

(b) achieving the optimum utilization and equitable distribution of those resources.

Amendment of s. 20—Objectives

14. Section 20 of the principal Act is amended by striking out “and the Director” and substituting “, the Director and fishery management committees”.

Amendment of s. 23—Delegation

15. Section 23 of the principal Act is amended—

(a) by striking out from subsection (1) “or any other Public Service employee” and substituting “, any other Public Service employee or a fishery management committee”;

(b) by inserting in subsection (3) “or a fishery management committee” after “employee”.

Amendment of s. 34—Persons and boats engaged or used in fisheries to be licensed

16. Section 34 of the principal Act is amended by striking out the penalty provision at the foot of subsection (1) and substituting the following penalty provision:

Penalty: In the case of an offence involving the taking of abalone or a fishing activity engaged in for the purpose of taking abalone—division 1 fine or division 5 imprisonment, or both;

In any other case—division 5 fine.

Amendment of s. 37—Conditions of licences

17. Section 37 of the principal Act is amended by striking out the penalty provision at the foot of subsection (4) and substituting the following penalty provision:

Penalty: In the case of a contravention or failure to comply with a condition relating to the taking of abalone—division 1 fine or division 5 imprisonment, or both;

In any other case: for a first offence—division 6 fine; for a second or subsequent offence—division 5 fine.

Insertion of s. 41a

18. The following section is inserted after section 41 of the principal Act:

Offence of killing, injuring, etc. a marine mammal

41a. (1) A person must not—

(a) kill, injure or molest, or cause or permit the killing, injuring or molestation of, a marine mammal;

or

- (b) take, sell or purchase or have in his or her possession or control a marine mammal or the body or part of the body of a marine mammal.

Penalty: Division 3 fine or division 5 imprisonment.

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

- (a) that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence;

or

- (b) that the act alleged to constitute the offence was authorised by or under some other Act or law.

Amendment of s. 44—Offences with respect to sale, purchase or possession of fish

19. Section 44 of the principal Act is amended—

- (a) by striking out the penalty provision at the foot of subsection (1) and substituting the following penalty provision:

Penalty: For an offence involving the sale or purchase of abalone—division 1 fine or division 5 imprisonment, or both;

In any other case—division 5 fine.;

- (b) by striking out the penalty provision at the foot of subsection (2) and substituting the following penalty provision:

Penalty: For an offence involving the sale or purchase of abalone or the possession or control of abalone for the purposes of sale—division 1 fine or division 5 imprisonment, or both;

In any other case—division 5 fine.

Amendment of s. 46—Regulations relating to fisheries and fishing

20. Section 46 of the principal Act is amended—

- (a) by inserting after subparagraph (iv) of paragraph (b) the following subparagraph:

(iva)—

- (A) prevent a foreign person from acquiring or holding a licence, or a substantial interest in a licence, in respect of the fishery;
- (B) prevent the Director from granting, renewing or consenting to the transfer of, a licence in respect of the fishery unless satisfied that the grant, renewal or transfer of the licence, as the case may be, would not result in a foreign person holding the licence or a substantial interest in the licence;
- (C) require, or empower the Director to require, a foreign person who holds an interest in a licence in respect of the fishery to furnish to

the Director prescribed particulars relating to the person's interest in the licence;

- (D) empower or require the Minister to make an order cancelling a licence in respect of the fishery held by a foreign person, or in which a foreign person holds a substantial interest, in contravention of a regulation under subparagraph (A);
- (E) define "foreign person" and "substantial interest" for the purposes of regulations under subparagraphs (A) to (D);
- (F) prescribe fines, not exceeding a division 1 fine, for a contravention or failure to comply with a regulation under subparagraph (A) or (C);;

(b) by inserting after subparagraph (xv) of paragraph (b) the following paragraph:

- (xvi) empower or require a court convicting the holder of a licence in respect of the fishery of an offence of contravening or failing to comply with a condition of the licence to order that the conditions of the licence be varied by the Director in the manner specified in the regulations;;

(c) by inserting after paragraph (b) the following paragraph:

- (ba) establish a management committee in respect of a fishery and for that purpose—
 - (i) prescribe the functions, powers and objectives of the committee;
 - (ii) provide for the appointment of members of the committee and any other matter relating to the membership of the committee;
 - (iii) prescribe the procedures to be followed at meetings of the committee;
 - (iv) make any other provision that is necessary or expedient for the operation of the body;;

(d) by striking out from paragraph (l) "Director" first occurring and substituting "Chief Executive Officer of the South Australian Research and Development Institute";

(e) by striking out from paragraph (l) "Director" second occurring substituting "Chief Executive Officer".

Amendment of s. 55—Regulations relating to fish processing

21. Section 55 of the principal Act is amended—

- (a) by striking out from paragraph (b) "Director" first occurring and substituting "Chief Executive Officer of the South Australian Research and Development Institute";
- (b) by striking out from paragraph (b) "Director" second occurring and substituting "Chief Executive Officer";
- (c) by inserting after paragraph (d) the following paragraph:

- (*da*) prohibit or restrict the sale, purchase, possession or control by fish processors of fish of a prescribed class;;
- (*d*) by inserting after its present contents (to be designated as subsection (1)) the following subsection:
- (2) Regulations made for the purposes of subsection (1)(*da*) may prescribe a class of fish comprised of or including fish taken elsewhere than in waters to which this Act applies.

Amendment of s. 56—Suspension or cancellation of authorities by courts

22. Section 56 of the principal Act is amended—

- (*a*) by inserting “or convicts the registered master of a boat registered by endorsement of the licence of an offence against section 69(4)” in subsection (2) after “prescribed offence”;
- (*b*) by inserting “or convicts the registered master of a boat registered by endorsement of the licence of an offence against section 69(4)” in subsection (3) after “prescribed offence” first occurring;
- (*c*) by inserting before paragraph (*a*) of subsection (4) the following paragraph:
- (*aa*) previous convictions for prescribed offences must be taken into account whether the prescribed offences were committed before or after the commission of the offence under consideration;;
- (*d*) by striking out from subsection (4)(*b*) “or a previous holder of the licence” and substituting “, a previous holder of the licence or a registered master, or previously registered master, of a boat registered by endorsement of the licence”;
- (*e*) by inserting “41a,” in subsection (10)(*a*) after “41,”;
- (*f*) by striking out “or” between paragraphs (*a*) and (*b*) of subsection (10) and inserting after paragraph (*b*) the following word and paragraph:
- or
- (*c*) an offence against section 69(4).

Amendment of s. 58—Review of decisions relating to authorities

23. Section 58 of the principal Act is amended—

- (*a*) by striking out from subsection (1)(*c*) “made under section 57” and substituting “suspending or cancelling an authority”;
- (*b*) by striking out from subsection (1) “a District” and substituting “the Administrative Appeals”;
- (*c*) by striking out from subsection (2) “District”;
- (*d*) by striking out from subsection (3) “District”;
- (*e*) by striking out subsection (4);

- (f) by striking out from subsection (7) "District" twice occurring;
- (g) by striking out from subsection (8) "District" twice occurring;
- (h) by striking out from subsection (9) "a District Court" and substituting "the Administrative Appeals Court".

Amendment of s. 69—Offences committed by bodies corporate or agents or involving registered boats

24. Section 69 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) Without limiting the effect of this section—

(a) where—

(i) the registered master of a registered boat is not the registered owner;

and

(ii) the registered master, while on the boat, does an act that constitutes an offence against this Act or that would, if done by the registered owner, constitute an offence against this Act,

the registered owner is guilty of an offence and liable to the same penalty as is prescribed for the principal offence or to the penalty to which the registered owner would be liable if the act, if done by him or her, constituted an offence against this Act;

(b) where a person other than the registered master or the registered owner of a registered boat, while on the boat, does an act that constitutes an offence against this Act or that would, if done by the registered owner, constitute an offence against this Act—

(i) the registered owner is guilty of an offence and liable to the same penalty as is prescribed for the principal offence or to the penalty to which the registered owner would be liable if the act, if done by him or her, constituted an offence against this Act;

or

(ii) if the registered owner is not the registered master, the registered owner and the registered master are each guilty of an offence and liable to the same penalty as is prescribed for the principal offence or to the penalty to which the registered owner would be liable if the act, if done by him or her, constituted an offence against this Act.

PART 3
AMENDMENT OF FISHERIES (SOUTHERN ZONE ROCK LOBSTER FISHERY
RATIONALIZATION) ACT 1987

Amendment of s. 3—Interpretation

25. Section 3 of the principal Act is amended by striking out “Scheme of Management (Southern Zone Rock Lobster Fishery) Regulations, 1984” from the definition of “Southern Zone” and substituting “*Scheme of Management (Rock Lobster Fisheries) Regulations 1991*”.

Amendment of s. 4—The Southern Zone Rock Lobster Fishery Rationalization Authority

26. Section 4 of the principal Act is amended by striking out paragraph (i) of subsection (2) and substituting the following paragraph:

(i) one will be a Public Service employee;.

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

ROMA MITCHELL Governor