

VICTORIA.



ANNO TERTIO

GEORGII QUINTI REGIS.

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No. 2391.

An Act to amend the *Fisheries Act* 1890 and for other purposes.

[7th December, 1912.]

**B**E it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. This Act may be cited as the *Fisheries Act* 1912, and shall be read and construed as one with the *Fisheries Act* 1890 (hereinafter called the Principal Act) and any Act amending the same; which Acts and this Act may be cited together as the Fisheries Acts.

Short title and citation.  
No. 1093.

*Amendments of Principal Act.*

2. In section three of the Principal Act—

- (a) In the interpretation of "fixed engine" after the word "net" there shall be inserted the word "line."
- (b) In the interpretation of "waters" for the words "and streams" there shall be substituted the words "streams, water-courses and lagoons"; and after the word "brackish" there shall be inserted the words "and also all

Amendment of No. 1093 s. 3.  
"Fixed engine."  
"Waters."

all reservoirs, dams, tanks, channels or works for water storage or distribution vested in or under the control of the Crown or any statutory authority."

(c) In the interpretation of "oyster brood" for the words "less in circumference than five inches" there shall be substituted the words "which can be passed through a metal ring having a clear inside diameter of one inch and a half or such other diameter as may be substituted therefor by the Governor in Council by proclamation published in the *Government Gazette*."

"Minister" substituted for "Commissioner of Customs."

3. In the Principal Act, for the words "Commissioner of Customs" or "Commissioner" wherever occurring there shall be substituted the word "Minister."

Amendment of No. 1093 s. 4. Seizure of boat. Amendment of No. 1093 s. 11.

4. (1) In section four of the Principal Act after the word "nets" there shall be inserted the words "or boat."

(2) In section eleven of the Principal Act for the word "reward" there shall be substituted the word "superannuation."

Amendment of No. 1093 s. 15.

5. For section fifteen of the Principal Act there shall be substituted the following section:—

Nets and fixed engines not to be used in certain waters.

"15. (1) Save as otherwise provided under the Fisheries Acts any person who uses any net or fixed engine for the purpose of taking fish—

(a) in any river, stream, creek or water-course, or

(b) in any lake or lagoon, or

(c) in any reservoir, dam, tank, channel or works for the storage or distribution of water vested in or under the control of the Crown or any statutory authority, or

(d) within such distance from the mouth of any river, stream, creek or water-course as may be proclaimed by the Governor in Council pursuant to the Fisheries Acts

shall be liable on conviction to a penalty of not less than Two pounds or more than Fifty pounds.

Exemptions by Governor in Council.

(2) The Governor in Council may by proclamation published in the *Government Gazette* permit the use of nets or specified fixed engines for the purpose of taking fish in any such waters for such time or times and under such conditions and restrictions as may be set forth in such proclamation."

Amendment of No. 1093 s. 16. Emptying nets.

6. In section sixteen of the Principal Act for the words "in the water" there shall be substituted the words "in water not less than one foot deep."

7. For

7. For section eighteen of the Principal Act there shall be substituted the following section :—

Amendment of  
No. 1093 s. 18.

“18. When any person is convicted of any offence contrary to the provisions of the Fisheries Acts or of any proclamation thereunder if such person has used a boat in committing such offence, the boat may in the discretion of the justices before whom any such person is convicted be forfeited to the Crown and every boat so forfeited shall be disposed of as the Minister may in writing direct.”

Forfeiture of boat  
used by person  
offending against  
Act.

8. For section nineteen of the Principal Act there shall be substituted the following section :—

Amendment of  
No. 1093 s. 19.

“19. (1) The Inspector of Fisheries or any assistant to such Inspector or any member of the police force may at any time with or without warrant seize any net fixed engine rod line or fishing tackle wherever found which has been used contrary to the provisions of the Fisheries Acts, and if so seized such net fixed engine rod line or fishing tackle shall thereupon be forfeited to the Crown and be disposed of in accordance with any general or special directions of the Minister.

Power to seize nets  
&c.

See No. 1093 s. 15.

(2) Any person who is convicted of so using any such net fixed engine rod line or other fishing tackle shall be liable to pay any expenses incurred in the seizure carriage and disposition of such net fixed engine rod line or fishing tackle in addition to any penalty which may be imposed upon him.”

Payment of expenses  
of seizure.

9. In section twenty-four of the Principal Act after the words “two shillings and sixpence” there shall be inserted the words “or such other sum as the Governor in Council may by proclamation published in the *Government Gazette* prescribe for any locality specified in such proclamation”; and at the end of the said section there shall be inserted the words “or to cancel any licence.”

Amendment of No.  
1093 s. 24.

Licences to take  
oysters.

10. In section twenty-seven of the Principal Act after the word “year” there shall be inserted the words “or during any period substituted for the said months by a proclamation of the Governor in Council published in the *Government Gazette*.”

Amendment of  
No. 1093 s. 27.

Close season for  
oysters.

11. In section thirty of the Principal Act after the words “second conviction” there shall be inserted the words “or subsequent conviction (as the case may be).”

Amendment of  
No. 1093 s. 30.

Penalty for  
subsequent  
convictions.

12. For

Amendment of  
No. 1093 s. 34.

Fish under the  
prescribed weight  
or size.

12. For section thirty-four of the Principal Act there shall be substituted the following section :—

“34. (1) Any person who

(a) takes attempts to take or consigns or has in his possession house or shop or under his control any fish of any of the species mentioned in the Second Schedule to this Act of a less weight than the weight set out after the name of such fish in such Schedule or than any weight which may for the time being be substituted by proclamation for such weight or of a less size or length than the size or length for the time being prescribed by proclamation; or

(b) sells or exposes for sale any such fish whether taken in Victoria or elsewhere,

shall on conviction be liable to a penalty of not less than Two pounds or more than Fifty pounds.

(2) Any such fish and any fish contained in any basket box or receptacle to whomsoever belonging containing more of such fish than one-twentieth of the whole number of fish contained therein may be seized by the Inspector of Fisheries or any assistant to such Inspector or by any member of the police force and if so seized shall thereupon be forfeited to the Crown.”

Amendment of No.  
1093 s. 35.

Fishing &c. during  
close season.

13. For section thirty-five of the Principal Act there shall be substituted the following section :—

“35. (1) Any person who takes attempts to take sells or exposes for sale or consigns or has in his possession house or shop or under his control during any close season for any species of fish any fish of such species shall on conviction be liable to a penalty of not less than Two pounds or more than Fifty pounds.

(2) Any such fish may be seized by the Inspector of Fisheries or any assistant to such Inspector or by any member of the police force and if so seized shall thereupon be forfeited to the Crown.”

Burden of proof  
under No. 1093  
ss. 34-35 as  
re-enacted.

14. Where any person is charged with an offence under section thirty-four or section thirty-five of the Principal Act as re-enacted by this Act the burden of proving that the fish were of lawful weight size or length or were not taken during the close season for such species of fish shall be on the person so charged.

Amendment of No.  
1093 s. 37.  
Proclamations.

15. (1) In section thirty-seven of the Principal Act after the word “size” there shall be inserted the words “or length”; and for the words “to take sell or expose for sale or possess” there shall be substituted the words “for any person to take attempt to take sell or consign or expose for sale or have in his possession house or shop or under his control.”

(2) Any

(2) Any proclamation which pursuant to section thirty-seven or section thirty-eight of the Principal Act may be made with regard to fish or matters pertaining to fish may where practicable be in like manner made with regard to oysters or matters pertaining to oysters and the said sections shall be read and construed accordingly.

Oysters.  
No. 1093 ss. 37 and  
38.

16. (1) In section thirty-eight of the Principal Act after the words "force and effect" there shall be inserted the words "either generally or."

Amendment of No.  
1093 s. 38.  
Proclamations.

(2) In paragraph (7) of the said section after the word "description" there shall be inserted the words "length depth" and after the word "fishing" there shall be inserted the words "or to be carried in boats engaged or employed in fishing."

(3) In paragraph (8) of the said section after the word "weight" there shall be inserted the words "or size or length."

(4) In paragraph (9) of the said section for the words "any river creek or stream or of the distance from the mouth of any river creek or stream within which nets and fixed engines are not to be used" there shall be substituted the words "any waters in or upon or within which nets and fixed engines are not to be used," and for the words "such river creek or stream or such prohibited place" there shall be substituted the words "such waters"; and after the last word of such paragraph there shall be added the words "and to provide that if any person having in his possession any net or fixed engine or any part thereof be found within a quarter of a mile of any such waters such person shall be deemed to have used such net or fixed engine for the purpose of catching fish in such waters unless he prove the contrary to be the fact."

17. Wherever in the Principal Act a maximum penalty of Twenty pounds is provided there shall be substituted in lieu thereof a maximum penalty of Fifty pounds.

Increase of  
maximum penalties.

18. In section forty-one of the Principal Act for the words "person taking" there shall be substituted the words "private individual taking" and for the words "such owner" there shall be substituted the words "such private individual."

Amendment of No.  
1093 s. 41.

#### *Fishing Licences.*

19. (1) Subject to the provisions of this Act—

(a) the Minister may authorize the issue and renewal of licences to be called "fishing licences"; and

Minister may  
authorize issue of  
licences.

(b) any such licence may be issued or renewed to any person on payment of the fee prescribed by proclamation under the Fisheries Acts.

Issue of licences.

(2) Every

Duration of licence.

(2) Every such licence under this Act shall remain in force until the thirty-first day of December in the year in which such licence is issued and no longer unless such licence is issued in the month of December in which case it shall remain in force until the thirty-first day of December in the year then next ensuing and no longer.

Persons netting or taking fish for sale to be licenced.

20. Save as otherwise provided under the Fisheries Acts no person shall, after the expiration of four months from the commencement of this Act, by any method take or attempt to take for sale any fish in or upon any waters or use any net for the purpose of taking or attempting to take any fish in any waters unless such person is the holder of a fishing licence under this Act.

Penalty for fishing without a licence.

21. (1) Any person not being the holder of a fishing licence who in contravention of the Fisheries Acts—

- (a) takes or attempts to take any fish for the purpose of sale ;
- or
- (b) uses any net for the purpose of taking or attempting to take any fish

shall on conviction be liable to a penalty of not less than Two pounds or more than Fifty pounds.

Licence to be produced to inspector &c.

(2) Any person who takes or attempts to take any fish or oysters in any manner for which a licence is necessary shall if so required by the Inspector of Fisheries or any assistant to the said Inspector or by any member of the police force produce his licence ; and if he fails to do so when so required or when afforded reasonable opportunity for so doing he shall on conviction be liable to a penalty not exceeding Five pounds.

Burden of proof.

(3) Where any person is charged with taking or attempting to take fish for sale contrary to the provisions of the Fisheries Acts the burden of proof that such fish were not intended for sale shall be upon the person so charged.

#### General.

Power of search.

22. The Inspector of Fisheries or any assistant to the said Inspector or any member of the police force may at any time with or without warrant search any parcel basket bag box or receptacle or any vehicle whatsoever or go on board any boat or vessel or enter any factory market shop tent or other premises to search for or inspect any fish and to search for any net or fixed engine or to seize and take possession of any net fixed engine rod line or other fishing tackle used or suspected to have been used in contravention of the Fisheries Acts.

23. Notwithstanding

**23.** Notwithstanding anything contained in the Fisheries Acts any person who is convicted of a second or subsequent offence for unlawfully using a net for the purpose of taking or attempting to take any fish shall be liable for such second or subsequent offence to a penalty of not less than Ten pounds or more than Fifty pounds.

Second offence for illegal netting.

**24.** (1) The Inspector of Fisheries may by notice in writing served on any person require such person to furnish to him or to some other person or officer specified by him a true weekly statement in writing of all fish or oysters taken by or consigned or received whether as principal or agent or salesman by such person showing the quantity of each species of fish or oysters and the waters in which they were taken respectively.

Returns.

(2) The notice may be served by delivering it to the person on whom it is to be served or by sending it by post in a prepaid registered letter addressed to him at his last known residence or place of business.

(3) If any person after the service of such notice upon him fails to comply with the requirements of such notice he shall on conviction be liable to a penalty not exceeding Ten pounds.

**25.** Any person using any kind of explosive substance in any waters without first obtaining the permission in writing of the Minister shall be liable on conviction to a penalty of not less than Five pounds or more than Fifty pounds.

Explosives not to be used without permission of Minister.

**26.** In any prosecution or other legal proceeding under the provisions of the Fisheries Acts instituted by or in the name of any officer appointed under the said Acts no proof shall be required of the appointment of such officer.

Proof of appointment not required.

**27.** In the Fourth Schedule to the Principal Act the words "Two shillings and sixpence" are hereby repealed and after the words "lawful times" there shall be inserted the words "and in the lawful methods and quantities."

Amendment of Fourth Schedule. No. 1093.

**28.** The Governor in Council may pursuant to sections thirty-eight and thirty-nine of the Principal Act make and publish proclamations—

Additional power to make proclamations.

(a) For prescribing the forms of applications for licences under the Fisheries Acts and renewals of licences ;

(b) For prescribing the persons by whom such licences shall be issued or renewed, the persons to whom such licences may be issued, the form of such licences, the fee to be charged for any such licence or renewal thereof, and the conditions subject to which such licences may be issued renewed or forfeited ;

(c) For

- (c) For prescribing the manner in which boats registered under the Fisheries Acts shall be legibly marked so as to indicate the fact that they are registered, and the fees to be charged for the registration of boats ;
- (d) For prescribing the method to be adopted in measuring the dimensions of nets and of the meshes of nets ;
- (e) For prohibiting the use of any trammel trawl or other net or engine whether fixed or unfixed to be employed in fishing in any waters which may be specified or referred to in any such proclamations for the whole of the year or for such portion or portions of the year as may be specified in such proclamations ;
- (f) For prohibiting fishing in or the taking of any fish from any waters which may be specified or referred to in any such proclamations for the whole of the year or for such portion or portions of the year as may be specified in such proclamations ;
- (g) For prohibiting with regard to any waters which may be specified or referred to in any such proclamations fishing therein or the taking of fish therefrom by any method or in any manner except as may be prescribed by such proclamations ;
- (h) For providing that boats having attached thereto or on board or in tow trammels trawls or other nets or engines whether fixed or unfixed to be employed in fishing shall not be moved from any mooring anchorage wharf or jetty within any waters which may be specified or referred to in any such proclamations and that trammels trawls or other nets or engines whether fixed or unfixed to be employed in fishing shall not be left or allowed to remain in or upon or within half-a-mile of any such waters during any portion or portions of the year which may be specified in such proclamations ;
- (i) For prescribing the methods of and regulations for consigning selling marketing storing and distributing fish and the treatment of fish for consigning selling marketing storing or distributing ;
- (j) For prohibiting the selling or exposing for sale of any fish of any species for such period as may be fixed by any such proclamations ; and
- (k) Generally for carrying out the provisions of the Fisheries Acts.

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MELBOURNE:

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