

Act No. 14, 1910.

An Act to amend the Fisheries Act, 1902, and the Net Fishing (Port Hacking) Act, 1901 ; and for other purposes incidental thereto. [27th August, 1910.]

FISHERIES
(AMENDMENT)
—

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Preliminary.

1. This Act may be cited as the "Fisheries (Amendment) Act, 1910," and shall be construed with the Fisheries Act, 1902, hereinafter called the Principal Act, and shall commence on a date to be proclaimed.

Administration.

2. (1) The Board of Fisheries for New South Wales is dissolved, and the powers, duties, and authorities of such board are vested in the Minister.

(2)

Fisheries (Amendment).

(2) For the purposes of carrying out the above provision, and for purposes relating thereto, the Principal Act is amended as follows:—

- (a) The expression “the Governor may on the recommendation of the board” is amended by omitting the words “on the recommendation of the board.”
- (b) “The board” and “such board” shall be read “the Minister.”
- (c) “They,” “them,” and “their,” when those words relate to the board, shall be read respectively “he,” “him,” and “his.”
- (d) The definition of “board” in section three is repealed.
- (e) Sections one and two of section four, and sections, five, six, seven, and eight are repealed.
- (f) Paragraph (a) of section nine is amended by omitting the words “the conduct of business by the board, and.”

Advisory board on fisheries.

3. (1) The Governor may appoint a board of not more than five persons, to be known as the Advisory Board on Fisheries, to advise the Minister on matters relating to sea, coast, and inland fisheries, the more effectual protection and improvement of such fisheries, and the determination of the times and seasons at which the taking of any species of fish may commence and shall cease, and any matters under the Principal Act or any Act amending the same upon which the Minister may desire their advice.

One member of such board shall be a licensed fisherman, one an oyster lessee, who is actually engaged in oyster culture, and one a person acquainted with the inland fisheries of New South Wales.

(2) The term of office of every such member of the board shall be three years, but any such member shall be eligible for reappointment.

(3) The members of such board may be remunerated by fees to be prescribed by regulations which may be made for that purpose under the Principal Act.

Inspectors and officers.

4. The Governor may appoint a Chief Inspector of Fisheries, and such paid and honorary inspectors of fisheries, and such other officers as he may think necessary for the purposes of the Principal Act, and any Act amending the same.

Every officer of police of or above the rank of senior-constable shall, ex officio, have the powers and authorities of an inspector of fisheries.

Amendments of Principal Act.

Definition of “oyster.”

5. (1) The definition of “oyster” in section three of the Principal Act is amended by omitting the words “which may be in or be introduced into any water,” and inserting in lieu thereof the words “and includes an oyster without its shell.” (2)

Fisheries (Amendment).

(2) The said section is amended by inserting the following—
 “Minister” means Minister of the Crown charged with the
 administration of this Act.

(3) The definition of “trout” in the said section is repealed
 and the following inserted:—

“Trout” includes all non-indigenous fish of the family Salmonidæ.

6. Subsection three of section four is amended by the addition, Amendment of s. 4.
 after the words “the cultivation of fish and oysters,” of the words
 “the control and regulation of the sale of fish and oysters, whether
 produced in New South Wales or imported.”

7. Section nine of the Principal Act is amended by inserting Amendment of s. 9.
 the following paragraph next after paragraph (p) in that section:—

(p 1) compelling lessees to place and maintain on their leased
 areas, stones, logs, and other material for catching spat;
 and no action shall lie or information be laid for any
 injury, damage, or nuisance caused by a compliance with
 regulations made under this paragraph.

8. (1) Subsection one of section eleven is amended by the Amendment of s. 11.
 addition of the following paragraph to be read as paragraph (d):—

(d) the taking of any named species of fish by any specified
 means.

(2) The same section is amended by the addition of the
 following subsection to be read as subsection four:—

(4) If any person in any close fishery, closed against the
 taking of any species of trout or salmon, or against the taking of
 any named species of fish by any specified means, during any
 close month takes, or attempts to take, in contravention of this
 section, such trout or salmon or specified fish, such person, and
 every person aiding or assisting him, or being in any boat with
 him during the commission of the offence, shall be liable to a
 penalty not exceeding fifteen pounds.

9. (1) Subsection five of section twenty-three is amended by Amendment of s. 23.
 the addition, after the words “Second Schedule,” of the words “or
 by any regulation.”

(2) The same section is amended by the addition of the
 following subsection, to be read after subsection five:—

(6) If any person removes any eggs or spawn from beneath
 the body of any fish known as or called the “crayfish,” he shall
 be liable to a penalty not exceeding ten pounds.

10. Section eighteen of the Principal Act is amended by the Amendment of s. 18.
 omission of the words “and depth.”

11. Section twenty of the Principal Act is amended by the Amendment of s. 20.
 omission of the words “or depth.”

12.

Fisheries (Amendment.)

Repeal of ss. 33 and 34.

Oyster culture leases.

Leases of average lands.

Leases of special lands.

Leases of inferior lands.

Preferent right to lease.

Renewals.

12. Sections thirty-three and thirty-four of the Principal Act are hereby repealed, and the following sections inserted in lieu thereof:—

33. (1) The Governor may lease Crown lands for oyster culture under permit or license with outer boundaries extending from an approximate high-water mark into the water for a distance to be fixed by the Minister, and at yearly rentals to be determined by him, for every hundred yards of frontage along an approximate high-water mark: Provided that such boundaries shall in no case extend beyond mid-stream.

(2) The term of such leases shall not exceed fifteen years; but, on the application of the lessee during the last year but one of the currency of any such lease, the Governor may renew the term for a like period at the same rental and with such limitations in other respects as he may approve. Such leases shall be termed "leases of average lands."

(3) No area upon which an aggregate rental of less than five pounds a year is payable shall be so leased to any person who is not already an oyster lessee or the holder of a permit or of a license under this Act.

33A. The Governor may lease for oyster culture under permit or license any specified area of Crown lands which may be determined as of special value after such land has been offered by auction or tender. Such leases shall be subject to the same conditions as a lease of average lands under this Act, provided that they need not necessarily be measured with a frontage along the approximate high-water mark. They shall be termed "leases of special lands."

33B. The Governor may lease inferior Crown lands under license or permit at rentals to be determined by the Minister for a term not exceeding ten years at equal annual rental, with right of renewal for a further term of five years. The Minister may re-value such lands during the ninth, or any later, year of occupation, and determine the rental for a further period of five years after the tenth or later year. Oysters shall not be removed from any such lands during the first year of the term of such license or permit. Such leases shall be known as "leases of inferior lands." The mean length of the outer boundaries of all areas under such lease shall be determined by the Minister, and such lease shall not include a hauling ground.

33c. Any person who proves to the satisfaction of the Minister that he has discovered a natural oyster-bed shall have a prior right to a lease under either of the three last preceding sections.

34. The Governor may grant a renewal of any unexpired lease issued under the Oyster Fisheries Act, 1884, for a further period of five years from the date of the expiry of such lease, at a rent to be determined by the Minister.

13.

Fisheries (Amendment).

13. The following section is inserted next after section thirty-eight of the same Act:— New section 33A.

33A. (1) The lessee of a leased area, or the owner or occupier of any land adjoining such area, may apply in the prescribed manner to the Minister to determine a way of access to such adjoining land over a part of the foreshore comprised in such area. Way of access may be determined by Minister.

The Minister, on serving notice of any such application on the owner or occupier or on the lessee, as the case may be, may, if he thinks fit, determine a way of access as aforesaid, and may in such determination prescribe what notice thereof shall be given; and may further impose such conditions on the lessee, and direct him to do such work for facilitating access by such way, as he thinks reasonable.

(2) The Minister may also, without any such application, on giving notice to the lessee and the owner of the adjoining land, make any determination and impose any conditions and give any directions as aforesaid.

(3) On such way being so determined, it may be used as a way of access to the land adjoining such area, and any person who uses the foreshore for access as aforesaid otherwise than by the said way shall be liable to a penalty not exceeding ten pounds: Provided that it shall be a defence to any proceeding for such penalty if it is proved that notice has not been given by the Minister as prescribed or that the conditions imposed on or directions given to the lessee under this section have not been complied with.

14. Section forty-two of the Principal Act is amended by adding thereto the following subsection:— Amendment of s. 42.

(2) If any lessee is convicted of stealing oysters from leased lands the Governor may cancel any lease held by such lessee.

15. Subsection one of section fifty is amended by the addition of the following proviso:— Amendment of s. 50.

Provided that any person may so sell oysters obtained from any area under lease to him without taking out such a license.

16. Section fifty-three of the Principal Act is repealed. Repeal of s. 53.

17. Section sixty-two of the said Act is amended by the addition of the following subsection, to be read after subsection two:— Amendment of s. 62.

(3) Provided that where a person uses a lawful net in contravention of any of the said sections the net shall not be forfeited, but the said person shall be liable for the first offence to a penalty of not less than five pounds, and for every subsequent offence to a penalty of not less than ten pounds. The penalty in neither case shall exceed fifty pounds.

18.

Fisheries (Amendment).

Nets for use in ocean waters and on sea beaches.

18. Notwithstanding anything in the Principal Act, there shall be no restriction as to the length or depth of any net that may be used for the capture of fish in ocean waters and on sea beaches.

General.

Prohibition of fixed engines, &c.

19. The Governor may by proclamation in the Gazette prohibit the use of any fishing-net, fixed engine, fish-trap, or other implement for the purpose of catching fish in any waters specified in such proclamation.

Any person acting in contravention of any such proclamation shall be liable to a penalty not exceeding fifteen pounds.

Seizure and forfeiture of nets and implements illegally used.

20. Any inspector or person duly authorised by the Minister may, when any fishing-nets, fixed engines, fish-traps or other implements for the purpose of catching fish are being used in contravention of this or the Principal Act, and whether in charge of any person or not, seize the same, and where their disposal is not otherwise provided for they shall be forfeited, which forfeiture shall be in addition to any penalty imposed for so using them: Provided that no lawful fishing-net shall be forfeited under the provisions of this section.

Right of entry for purposes of inspection.

21. When it is necessary for the purposes of this Act or the Principal Act every inspector and every person duly authorised in that behalf by the Minister shall have a right of entry on all lands for the purposes of inspection and for generally carrying out the duties imposed upon him under this Act or the Principal Act.

Persons unlawfully in possession of oysters.

22. Any person who, on being charged before a justice with having oysters in his possession which may reasonably be suspected of being stolen or unlawfully obtained, does not give an account to the satisfaction of such justice how he came by the same, shall be liable to a penalty not exceeding ten pounds.

Certain persons to give names and addresses.

23. Every person who may reasonably be suspected of committing a breach of the provisions of Parts III or IV of the Principal Act, or of the Net Fishing (Port Hacking) Act, 1901, shall on demand give his true name and address to any inspector or justice.

Any person refusing or neglecting to comply with such demand, or giving a false or fictitious name or address, shall be liable to a penalty not exceeding ten pounds.