

**FISHERIES AND OYSTER FARMS (AMENDMENT) ACT, 1984,
No. 123**

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 123, 1984.

An Act to amend the Fisheries and Oyster Farms Act, 1935, so as to make further provision with respect to licenses under that Act for the taking and landing of fish for sale and to vary the penalties for certain offences under that Act; and for other purposes. [Assented to, 23rd November, 1984.]

Fisheries and Oyster Farms (Amendment) 1984

BE it enacted by the Queen'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:—

Short title.

1. This Act may be cited as the "Fisheries and Oyster Farms (Amendment) Act, 1984".

Commencement.

2. (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) Schedule 1 (1), (2), (3), (5) and (6) (a), and section 5 in its application to those provisions, shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Schedule 3 (10), and section 5 in its application to that provision, shall commence on the day appointed and notified under section 2 (3) of the Fisheries and Oyster Farms (Amendment) Act, 1979, in respect of the provisions specified in section 2 (3) (1) of that Act, if that day occurs after the date of assent to this Act.

Principal Act.

3. The Fisheries and Oyster Farms Act, 1935, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LICENSES.

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SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND PENALTIES.

SCHEDULE 3.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 4.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

SCHEDULE 5.—SAVINGS AND TRANSITIONAL PROVISIONS.

Amendment of Act No. 58, 1935.

5. The Principal Act is amended in the manner set forth in Schedules 1–4.

Savings and transitional provisions.

6. Schedule 5 has effect.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENSES.

(1) Sections 4K (4), 22B—

Omit “25” wherever occurring, insert instead “24c”.

(2) (a) Section 4I.—

Omit “or 25” where firstly occurring, insert instead “, 24A, 24C or 25”.

(b) Section 4I. (b)—

Omit “25”, insert instead “24c or 25”.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING
TO LICENSES—*continued.*

(c) Section 4L (c)—

Omit “or 25”, insert instead “; 24C or 25”.

(3) Section 22A (2) (a)—

Omit “he is the holder of a license under section 25”, insert instead “the person is authorised to take fish for sale by a license under section 24C”.

(4) Section 24A (3A)–(3C)—

After section 24A (3), insert:—

(3A) Without affecting the generality of subsection (3), conditions of a license may prohibit or regulate the use of the licensed boat for or in connection with any one or more of the following activities:—

- (a) the taking of any particular species or description of fish;
- (b) the taking of fish from any specified place or area of waters;
- (c) the taking of fish by any specified method.

(3B) A person is guilty of an offence if, being the holder of a license, the person contravenes any of the conditions to which the license is subject.

(3C) The Minister may at any time, by notice in writing under the hand of the Minister or of a prescribed officer and served on the holder of a license, cancel any condition to which the license is subject or suspend any such condition for a period specified in the notice.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING
TO LICENSES—*continued.*

(5) Section 24c—

After section 24B, insert:—

Fishermen to be licensed.

24c. (1) A license may be issued authorising the licensee—

- (a) to take fish for sale from prescribed waters; and
- (b) to land fish in New South Wales for sale.

(2) A license may be issued authorising the licensee—

- (a) to take fish for sale from prescribed waters; and
- (b) to land fish in New South Wales for sale,

and authorising a number of other persons (not exceeding the number specified in the license as the maximum number of other persons authorised by the license)—

- (c) to take fish for sale from prescribed waters, while on board a boat of which the licensee has charge; and
- (d) to land fish in New South Wales for sale, being fish lawfully taken for sale by a person while on board a boat of which the licensee has charge

(3) A license under this section does not exempt a person from any requirement made by section 23 or 24.

(4) The holder of a license under subsection (2) is guilty of an offence if the number of persons, excluding licensees under this section—

- (a) taking or attempting to take fish for sale by use of a boat of which that licensee has charge; or

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TO LICENSES—*continued.*

(b) landing fish in New South Wales for sale, being fish taken from any such boat,
exceeds the number specified, pursuant to subsection (2), in the license as the maximum number of other persons.

(5) The holder of a license under subsection (2) who fails to keep records, as prescribed, in respect of the other persons authorised from time to time by the license to take fish for sale or who fails to produce any such records as required by any prescribed person is guilty of an offence.

(6) A person who—

(a) takes, or attempts to take, fish for sale from prescribed waters;
or

(b) lands fish in New South Wales for sale,

is guilty of an offence unless authorised to take or land the fish, as the case may require, by a license under this section or otherwise authorised to do so by or under this Act.

(6) (a) Section 25 (1)—

Omit the subsection, insert instead:—

(1) In this section, "fisherman's license" means a license under section 24c.

(b) Section 25 (5A)–(5C)—

After section 25 (5), insert:—

(5A) Without affecting the generality of subsection (5), conditions of a fisherman's license may prohibit or regulate the carrying on, by a person authorised by the license to take fish for sale, of any one or more of the following activities or any activity in connection therewith:—

(a) the taking of any particular species or description of fish;

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING
TO LICENSES—*continued.*

(b) the taking of fish from any specified place or area of waters;

(c) the taking of fish by any specified method.

(5B) A person is guilty of an offence if, being the holder of a fisherman's license or another person authorised by the license to take fish for sale, the person contravenes any of the conditions to which the license is subject.

(5C) The Minister may at any time, by notice in writing under the hand of the Minister or of a prescribed officer and served on the holder of a fisherman's license, cancel any condition to which the license is subject or suspend any such condition for a period specified in the notice.

(c) Section 25 (7)—

Omit "Licenses under this section", insert instead "Fishermen's licenses".

(d) Section 25 (15)—

Omit the subsection.

(7) (a) Section 119—

Omit "An appeal shall", insert instead "(1) An appeal shall".

(b) Section 119—

Omit "Such appeal", insert instead "(2) An appeal under this section".

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING
TO LICENSES—*continued.*

(c) Section 119 (3)–(5)—

At the end of section 119, insert:—

(3) There shall be deemed to have been a refusal by the licensing authority to issue or renew a license if the licensing authority has not issued or renewed the license, as the case may be—

- (a) except as provided by paragraph (b), within 60 days; or
- (b) where the applicant and the licensing authority agree on a longer period, within the longer period,

after the date on which an application for the issue or renewal of the license was duly lodged.

(4) Where—

- (a) an application for the issue or renewal of a license of a particular kind results in the issue or renewal of a license of that kind but the license as issued or renewed does not confer the authority as sought by the applicant; or
- (b) a license is issued or renewed subject to conditions with which the applicant is dissatisfied,

the issue or renewal, or the imposition of the conditions, as the case may be, shall not, for the purposes of this section, constitute a refusal to issue or renew the license.

(5) The determination by the District Court of an appeal under this section shall be carried into effect by the licensing authority.

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SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
OFFENCES AND PENALTIES.

(1) Section 17 (3)—

Omit the subsection, insert instead:—

(3) A person who, without lawful excuse and otherwise than with the consent or at the direction of the Minister, deposits or liberates in any waters any fish or the eggs or fry of any fish is guilty of an offence.

(2) Section 18 (8)—

Omit the subsection.

(3) (a) Section 25B (1), (10)—

Omit "\$100" wherever occurring, insert instead "\$200".

(b) Section 25B (11)—

After section 25B (10), insert:—

(11) A person who is the holder of an inland angling license and who fails, on demand made by an inspector, to produce the license for inspection is guilty of an offence and liable to a penalty not exceeding \$200.

(4) (a) Section 90 (4)—

Omit "\$100", insert instead "\$200".

(b) Section 90 (5)—

Omit the subsection, insert instead:—

(5) A person who is the holder of a license under this section and who fails, on demand made by an inspector, to produce the license for inspection is guilty of an offence and liable to a penalty not exceeding \$200.

*Fisheries and Oyster Farms (Amendment) 1984*SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND PENALTIES—*continued.*

(5) (a) Section 103 (2)—

Omit "\$500", insert instead "\$1,000".

(b) Section 103 (2)—

After "six months.", insert "or both,".

(c) Section 103 (2)—

Omit "any such penalty", insert instead "imposing any such penalty or sentencing the person to imprisonment, or both".

(6) Section 106 (1)—

Omit "\$500", insert instead "\$1,000".

(7) Section 114—

Omit "not exceeding \$500.", insert instead:—

not exceeding—

(a) \$2,000, where the fish concerned are abalone; or

(b) \$1,000, in any other case.

(8) Section 116 (1)—

Omit the subsection, insert instead:—

(1) Except as provided by subsection (2), a person who—

(a) in New South Wales, has in the person's possession or on the person's premises any prohibited size fish;

(b) has any prohibited size fish in the person's boat in any prescribed waters; or

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(c) in New South Wales, sells or attempts to sell any prohibited size fish,

whether the fish were taken from prescribed waters or other waters, is guilty of an offence and liable to a penalty not exceeding—

(d) \$2,000, where abalone are a class of fish specified under section 120 (3) and the fish concerned are prohibited size abalone; or

(e) \$1,000, in any other case.

(9) Section 121 (1)—

Omit "not exceeding \$500 for any breach thereof.", insert instead:—
not exceeding—

(a) \$2,000 for any breach thereof constituted by the taking or possession, or any other act, matter or thing concerning the taking or possession, of abalone; or

(b) \$1,000 for any other breach thereof.

SCHEDULE 3.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 14 (f)—

Omit "address", insert instead "place of abode".

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(2) Section 15 (4)—

Omit "such period, not exceeding 12 months, as is specified therein", insert instead "12 months or, where a longer period is specified in the permit, the period so specified".

(3) (a) Section 19 (1)—

Omit "haul or set any net", insert instead "use a net".

(b) Section 19 (1) (a)—

Omit the paragraph, insert instead:—

(a) in any of the waters—

(i) of Brisbane Water or of its tributaries; or

(ii) of Broken Bay,

north of a line drawn from Box or Hawk Head to Green Point; or

(c) Section 19 (2) (a)—

Omit "hauls or sets", insert instead "uses".

(d) Section 19 (2) (b)—

Omit "or takes a net on", insert instead "a net in or on or adjacent to".

(e) Section 19 (3) (b)—

Omit "on such waters solely for the purpose of being so taken", insert instead "in or on or adjacent to waters mentioned or referred to in subsection (1) solely for the purpose of being taken to other waters in accordance with the permit".

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SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(f) Section 19 (5)—

After section 19 (4), insert:—

(5) The regulations may exempt any prescribed person or persons of a prescribed class from the operation of any specified provision of this section, either absolutely or in respect of any specified locality and either unconditionally or subject to prescribed conditions.

(4) (a) Section 25A (c)—

After “regulations”, insert “, or exempted in writing under the hand of the Minister,”.

(b) Section 25A (2)—

At the end of section 25A, insert:—

(2) An exemption under subsection (1) (c) may be limited in its operation to times, places or circumstances specified in the instrument by which the exemption is granted.

(5) Section 29 (5)—

After section 29 (4), insert:—

(5) An order made by a court under section 75B of the Justices Act, 1902, or section 556A of the Crimes Act, 1900, in any proceedings for an offence referred to in subsection (1) or (2) shall be deemed, for the purposes of subsection (3), to be a conviction for the offence.

(6) Section 32 (4)—

After section 32 (3), insert:—

(4) An order made by a court under section 75B of the Justices Act, 1902, or section 556A of the Crimes Act, 1900, in any proceedings for an offence referred to in subsection (1) shall be deemed, for the purposes of subsection (2), to be a conviction for the offence.

*Fisheries and Oyster Farms (Amendment) 1984*SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(7) Section 41A (1E)—

After section 41A (1D), insert:—

(1E) The Authority shall, in the exercise and performance of its powers, authorities, duties and functions (except in relation to the contents of a submission or recommendation made by it to the Minister), be subject to the direction and control of the Minister.

(8) Section 53 (4)—

After section 53 (3), insert:—

(4) Where the instrument by which the exemption is granted so specifies, this section shall not apply to a person for the time being exempted in writing under the hand of the Minister from the operation of Division 3A of Part III.

(9) Section 55—

Omit “salmon”, insert instead “salmon roe”.

(10) Section 90A (a)—

After “them”, insert “or propagates, hatches or rears oysters, otherwise than in an oyster farm, for the purpose of selling them”.

(11) Section 90L (3)—

After section 90L (2), insert:—

(3) An order made by a court under section 75B of the Justices Act, 1902, or section 556A of the Crimes Act, 1900, in any proceedings for an offence under section 90I shall be deemed, for the purposes of subsection (1), to be a conviction for the offence.

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(12) Section 103 (1) (d)—

Omit “address” wherever occurring, insert instead “place of abode”.

(13) (a) Section 117 (1)—

Omit “who constructs or erects or causes to be constructed or erected over or upon any tidal or inland river or creek, or over any flowing water, any dam, weir or reservoir to carry out”, insert instead:—

who—

(a) constructs or erects any dam, weir or reservoir over or upon any river or creek, or over any flowing water, or causes any dam, weir or reservoir to be so constructed or erected; or

(b) alters or modifies any dam, weir or reservoir so constructed or erected or causes any such dam, weir or reservoir to be altered or modified,

to carry out,

(b) Section 117 (2)—

After “construct”, insert “or erect, or to alter or modify,”.

(c) Section 117 (2)—

After “reservoir” where secondly occurring, insert “, or for the alteration or modification thereof”.

(14) (a) Section 120 (2) (f)—

Omit the paragraph, insert instead:—

(f) regulating or prohibiting the use of, and methods of operating, nets or other fishing gear or other devices or means whatever for the taking of fish, including any use

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thereof that constitutes or may constitute a danger to fishermen or members of the public, and regulating or prohibiting the possession or use, in any prescribed locality or circumstances, or with any prescribed intent, of any net or other fishing gear or other such device or means of a prescribed type, design, construction, capability or description;

(b) Section 120 (2) (n)—

After section 120 (2) (m), insert:—

- (n) authorising any person, body or society in any respect in which a person, body or society may be authorised by a permit under section 15, for such periods and upon payment of such fees as may be prescribed;

(c) Section 120 (2) (kkk)—

After "Authority", insert ", prohibiting the unlawful possession of fish containers which are or have been rented to any person by the Authority or a trading society and providing for the seizure by a prescribed person, and subsequent disposition, of any such containers unlawfully in the possession of any person".

SCHEDULE 4.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION.

(1) Section 3—

Omit the section.

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STATUTE LAW REVISION—*continued.*

- (2) Section 4 (1), definition of "Director-General"—
Omit the definition of "Director", insert instead:—
"Director-General" means the Director-General of the Department of Agriculture.
- (3) (a) Section 8A—
Omit "Director" wherever occurring, insert instead "Director-General".
(b) Section 8A (1)—
Omit "New South Wales State Fisheries", insert instead "Department of Agriculture".
- (4) Sections 11, 20E (1), 24B, 40E (4), 41A, 42, 91A (3) (b), 116B—
Omit "the Director" wherever occurring, insert instead "the Director-General".
- (5) Sections 16 (3) (d), 101—
Omit "Consolidated Revenue Fund" wherever occurring, insert instead "Consolidated Fund".
- (6) Section 18 (6)—
Omit "to his knowledge was", insert instead "the person knows to have been".
- (7) Part III, Division 3A, heading—
Omit the heading, insert instead:—
DIVISION 3A.—Licensing of persons to fish in inland waters and establishment of the Inland Fisheries Fund.
- (8) Section 41A (3A)—
Omit "The Deputy Director, New South Wales State Fisheries," insert instead "An officer of the Department of Agriculture nominated by the Director-General".
- (9) Sections 41A (17), 41C (2) (f) (iii), (iv)—
Omit "Public Service Act, 1902" wherever occurring, insert instead "Public Service Act, 1979".

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STATUTE LAW REVISION—*continued.*

- (10) Section 67—
Omit "and of any regulations".
- (11) Sections 84, 101—
Omit "His Majesty" wherever occurring, insert instead "the Crown".
- (12) Section 108A—
Omit "or the regulations".
- (13) Section 116 (2) (b)—
Omit "approval", insert instead "authority".
- (14) Section 120 (2) (cc)—
Omit "tidal or inland".

SCHEDULE 5.

(Sec. 6.)

SAVINGS AND TRANSITIONAL PROVISIONS.

Offences and penalties.

1. Nothing in the Principal Act, as amended by this Act, authorises the imposition of a penalty for an offence committed before the date of assent to this Act which could not have been imposed if this Act had not been enacted.

Fishermen's licenses.

2. (1) A license issued under section 25 of the Principal Act which, immediately before the day appointed and notified under section 2 (2), has not expired shall, on and from that day, be deemed to be a license issued under section 24c (1) of the Principal Act, as amended by this Act, and shall, subject to subclause (2) and that Act, as so amended, continue in force.

(2) Nothing in subclause (1) affects the continuity, on or after the day referred to in that subclause, of any condition or suspension to which a license was subject immediately before that day.

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SCHEDULE 5—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

Appeals.

3. (1) Section 119 (4) of the Principal Act, as amended by this Act, does not apply to or in respect of an appeal commenced under that section before the date of assent to this Act, and every appeal so commenced shall be heard and determined as if that subsection had not been enacted.

(2) Subject to subclause (1), section 119 of the Principal Act, as amended by this Act, applies to and in respect of an application for a license, or for renewal of a license, lodged before the date of assent to this Act in the same way as it applies to and in respect of any such application lodged on or after that date.

Savings in consequence of administrative change.

4. (1) For the purposes of sections 11 and 24B of the Principal Act, as in force on and after 16th March, 1983, a certificate purporting to be signed before that date by the Director, New South Wales State Fisheries, and certifying a matter referred to in either of those sections shall be deemed to be, and always to have been, as good and effectual as a certificate to the like effect purporting to have been signed on or after that date by the Director-General of the Department of Agriculture.

(2) A person who, immediately before 16th March, 1983, was authorised under section 20E (1), 40E (4) or 42 (4B) of the Principal Act by the Director, New South Wales State Fisheries, shall, on and from that date, be deemed to have been so authorised by the Director-General of the Department of Agriculture.

(3) A reference in section 116B (a) of the Principal Act, as amended by this Act, to the Director-General of the Department of Agriculture includes a reference to the Director, New South Wales State Fisheries.

Saving of certain regulations.

5. The regulations made for the purposes of section 120 (2) (f) of the Principal Act and in force immediately before the date of assent to this Act shall, notwithstanding the repeal and substitution of that paragraph by this Act, continue in force and shall be deemed to have been made for the purposes of that paragraph of the Principal Act, as amended by this Act.
