

South Australia



**FISHERIES (MISCELLANEOUS) AMENDMENT ACT  
1995**

**No. 28 of 1995**

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**ELIZABETHAE II REGINAE**

A.D. 1995

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No. 28 of 1995

An Act to amend the Fisheries Act 1982.

[Assented to 27 April 1995]

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Fisheries (Miscellaneous) Amendment Act 1995*.

(2) The *Fisheries Act 1982* is referred to in this Act as "the principal Act".

**Amendment of s. 5—Interpretation**

2. Section 5 of the principal Act is amended—

(a) by striking out from subsection (1) the definition of "fishery management committee";

(b) by inserting after the definition of "foreign boat" in subsection (1) the following definition:

"management committee" means a management committee established in respect of a fishery or prescribed class of fish farming by the regulations;

**Amendment of s. 20—Objectives**

3. Section 20 of the principal Act is amended by striking out "fishery management committees" and substituting "management committees".

**Amendment of s. 23—Delegation**

4. Section 23 of the principal Act is amended by striking out from subsections (1) and (3) "fishery management committee" and substituting, in each case, "management committee".

**Amendment of s. 28—Powers of fisheries officers**

5. Section 28 of the principal Act is amended—

(a) by striking out from subsection (1)(d) "and the address of his or her usual place of residence" and substituting "and usual place of residence and to produce evidence of his or her identity";

(b) by striking out subsection (2) and substituting the following subsections:

(2) Subject to subsection (2B), a fisheries officer cannot exercise the power conferred by subsection (1)(a) in relation to any premises except on the authority of a warrant issued by a justice.

(2A) A justice must not issue a warrant under subsection (2) unless satisfied, by information given on oath, that the warrant is reasonably required in the circumstances.

(2B) A warrant is not required to exercise the power conferred by subsection (1)(a) in relation to non-residential premises if—

(a) the premises are used by a fish processor for, or in connection with, processing, storing or dealing with fish;

or

(b) the fisheries officer has reason to believe that in the circumstances urgent action is required.;

(c) by inserting after paragraph (a) of subsection (4) the following paragraph:

(ab) in response to a requirement under subsection (1)(d)—

(i) state a name or address that is false;

or

(ii) produce false evidence of his or her identity;;

(d) by inserting after subsection (5) the following subsection:

(5A) A fisheries officer, or a person accompanying or assisting a fisheries officer, who, in relation to the exercise of powers under this Act—

(a) addresses offensive language to any other person;

or

(b) without lawful authority or a reasonable belief as to lawful authority, hinders or obstructs, or uses or threatens to use force in relation to, any other person,

is guilty of an offence.

Penalty: Division 6 fine.;

(e) by striking out subparagraph (i) of paragraph (b) of subsection (6) and substituting the following subparagraph:

(i) when required to do so under this section, failed—

(A) to state truthfully his or her name or usual place of residence;

or

(B) to produce true evidence of his or her identity;.

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

6. Section 44 of the principal Act is amended by inserting after subsection (2) the following subsection:

(2AA) In proceedings for an offence against subsection (2), if it is proved that a person had more than the prescribed quantity of abalone in his or her possession or control, it will be presumed, in the absence of proof to the contrary, that the person had that abalone in his or her possession or control for the purposes of sale.

**Amendment of s. 48C—Non-application of Development Act 1993**

7. Section 48C of the principal Act is amended by striking out from subsections (1) and (2) "*Planning Act 1982*" and substituting, in each case, "*Development Act 1993*".

**Insertion of s. 50A**

8. The following section is inserted after section 50 of the principal Act:

**Regulations relating to fish farming management committees**

50A. The Governor may make regulations establishing a management committee in respect of a prescribed class of fish farming and for that purpose—

- (a) prescribe the functions, powers and objectives of the committee;
- (b) provide for the appointment of members of the committee and any other matter relating to the membership of the committee;
- (c) prescribe the procedures to be followed at meetings of the committee;
- (d) make any other provision that is necessary or expedient for the operation of the committee;
- (e) prescribe penalties not exceeding a division 6 fine for breach of, or failure to comply with, a regulation.

**Amendment of s. 53—Leases or licences to farm or take fish**

9. Section 53 of the principal Act is amended by striking out from subsection (1) "and section 76 of the *Harbors Act 1936*".

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

10. Section 58 of the principal Act is amended by striking out from subsection (3)(c) "appeal" and substituting "review".

**Amendment of s. 66—Additional penalty based on value of fish taken unlawfully**

11. Section 66 of the principal Act is amended—

- (a) by striking out from subsection (1) "involving the taking of fish" and substituting "involving fish taken in contravention of this Act";
- (b) by striking out from subsection (1)(a) "at which they were taken" and substituting "at which the offence was committed".

**Amendment of s. 67—Evidentiary provisions**

12. Section 67 of the principal Act is amended by inserting after subsection (1)(d) the following paragraphs:

- (e) that an amount specified in the certificate was at a specified time the wholesale value of a specified species of fish;
- (f) that the Director had or had not consented to the use of a boat specified in the certificate in the place of a specified registered boat at a specified time;
- (g) that the Director had or had not consented to a person specified in the certificate being in charge of a specified boat in the place of the registered master at a specified time.

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

13. Section 69 of the principal Act is amended by striking out subsection (4) and substituting the following subsection:

(4) Without limiting the effect of this section—

(a) where the registered master of a registered boat is not the registered owner and—

(i) the registered master, while on the boat, does or omits to do an act or thing the doing or omission of which constitutes an offence against this Act or that would, if done or omitted to be done by the registered owner, constitute an offence against this Act;

or

(ii) the registered master does or omits to do, in relation to a fishing activity conducted by use of the boat, an act or thing the doing or omission of which constitutes an offence against this Act or that would, if done or omitted to be 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 or thing, if done or omitted to be done by him or her, constituted an offence against this Act;

(b) where—

(i) an employee or other agent of the registered owner or the registered master, while on the boat, does or omits to do an act or thing the doing or omission of which constitutes an offence against this Act or that would, if done or omitted to be done by the registered owner, constitute an offence against this Act;

or

- (ii) an employee or other agent of the registered owner or the registered master does or omits to do, in relation to a fishing activity conducted by use of the boat, an act or thing the doing or omission of which constitutes an offence against this Act or that would, if done or omitted to be done by the registered owner, constitute an offence against this Act,

then—

- (iii) 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 or thing, if done or omitted to be done by him or her, constituted an offence against this Act;

or

- (iv) 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 or thing, if done or omitted to be done by him or her, constituted an offence against this Act.

**Amendment of s. 70—Summary offences**

14. Section 70 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

- (2) Proceedings for an offence against this Act may be commenced at any time within three years of the day on which the offence is alleged to have been committed.

**Amendment of s. 72—Regulations**

15. Section 72 of the principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) Without limiting the generality of subsection (1), those regulations may—
  - (a) prescribe fees to be paid on application for a permit or exemption under this Act or for the issue of a duplicate authority;
  - (b) provide for the payment, recovery, waiver or reduction of such fees.

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

ROMA MITCHELL Governor