

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

No. 2 of 1929.

AN ORDINANCE

Relating to the Protection of Fish.

BE it ordained by the Governor-General of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act* 1909 and the *Seat of Government (Administration) Act* 1910, as follows:—

1. This Ordinance may be cited as the *Fish Protection Ordinance* 1929. Short title.
2. The *Fish Protection Ordinance* 1919-1925 is hereby repealed. Repeal.
3. Sections twenty-eight to thirty-two (both inclusive) and section fifty of the *Fisheries Act*, 1902 of the State of New South Wales shall cease to apply to the Territory. State Acts to cease to apply.
4. In this Ordinance, unless the contrary intention appears— Definitions.
 - “Dam” includes any fixed obstruction used for the purpose of damming up water;
 - “Engine” includes any net, implement, apparatus, or device for taking or facilitating the taking of fish;
 - “Fish” means salmon and freshwater fish, and their young, or fry, or spawn;
 - “Fishing” means taking fish;
 - “Fresh water fish” means any description of fish living in fresh water, exclusive of salmon, and of any kinds of fish which migrate to and from tidal waters;
 - “Officer” means an officer appointed under this Ordinance;
 - “River” includes stream, creek, and watercourse;
 - “Rod and line” means a single rod and line;
 - “Salmon” includes all migratory fish of the genus salmon, whether known by the name salmon, grilse, sea-trout, salmon-trout, smolt or parr or by any other local name;
 - “Take” includes catch, dredge for, raise, kill, and attempt to take, and “taking” has a corresponding meaning;
 - “This Ordinance” includes the regulations made thereunder;

“Unclean” in relation to any fish, means that the fish is about to spawn or has recently spawned and has not recovered from spawning;

“Undersized” in relation to fish means that the fish is of a less size than the prescribed minimum size which may be lawfully taken; and

“Waters” means any waters in the Territory and also all reservoirs, dams, channels, or works for water storage or distribution vested in, or under the control of, the Commonwealth, or any statutory authority, but does not include any waters the property of any private person.

Delegation by
Commission.

5.—(1.) The Commission may delegate any of its powers and functions under this Ordinance (except this power of delegation) in relation to any matters or class of matters, so that the delegated powers and functions may be exercised by the delegate with respect to the matters or class of matters specified in the instrument of delegation.

(2.) Every delegation under this section shall be revocable at will, and no delegation shall prevent the exercise of any power or function by the Commission.

Appointment
of officers.

6.—(1.) The Commission may appoint such officers as it thinks fit to administer this Ordinance.

(2.) Every officer shall, for the enforcement of the provisions of this Ordinance, have the powers and authorities of a member of the Police Force.

(3.) Every member of the Police Force may exercise all the powers of an officer appointed under this Ordinance, but shall not be required to produce evidence of his authority under this Ordinance.

(4.) The production by any officer of his appointment in writing or of a copy of the *Gazette* containing a notification of the appointment, shall be sufficient evidence of his authority to perform any act authorized by this Ordinance.

(5.) Any officer exercising any power or authority, or carrying out any duty, conferred or imposed upon him by this Ordinance, may employ such persons as he thinks fit to assist him in so doing and a person so employed shall not incur any liability by reason of his rendering any such assistance.

Powers of
officers.

7. Any officer may, on production of his authority, for the purpose of searching for fish of less size than may be lawfully taken, or for fish taken contrary to the provisions of the Ordinance—

(a) at all reasonable times enter any shop, tent or other premises or any place where fish are kept for sale or kept or treated for business purposes; and

- (b) examine any parcel, basket, bag, box or receptacle, or any vehicle in the possession or under the control of any angler, fisherman, or itinerant vendor of fish.

8.—(1.) Any officer may—

- (a) board and enter upon any boat and search it for fish, engines, or other articles intended or adapted for fishing;
- (b) examine any engines or other articles in use for fishing, or in the possession or under the control of any person and intended or adapted for fishing;
- (c) seize, detain or remove any boat, fish, engines or other articles which the officer reasonably believes to be liable to be forfeited under this Ordinance; and
- (d) require any person engaged in fishing to state his name in full, and place of abode.

Powers in relation to engines, &c.

(2.) Any person who, after being so required to state his name in full and place of abode and on production of the necessary authority, refuses or fails to state his real name and place of abode, shall be guilty of an offence.

Penalty: Ten pounds.

(3.) Any officer may arrest without warrant, any person reasonably suspected of having acted in contravention of the last preceding sub-section, and may keep him in custody until he can be taken before a Court of Petty Sessions to be tried for the offence of which he is suspected.

9.—(1.) Any person who uses or has in his possession any light for the purpose of attracting fish or who, for the purpose of fishing, uses or has in his possession any otter lath or jack, wire or snare, spear, gaff (except as otherwise provided in this section) stroke-haul snatch or other like instrument, shall be guilty of an offence.

Prohibited instruments.

Penalty: Twenty pounds.

(2.) For the purposes of this section—

“Otter lath or jack” includes any small boat or vessel, board, stick, or other instrument, whether used with a hand line, or auxiliary to a rod and line, or otherwise for the purpose of running out lures, artificial or otherwise;

“Strokehaul or snatch” includes any instrument or device, whether used with a rod and line or otherwise, for the purpose of foulhooking any fish.

(3.) This section shall not apply to any person using a gaff (consisting of a plain metal hook without a barb) or tailer as auxiliary to angling with a rod and line.

Discharging
missiles.

10. Any person who, for the purpose of fishing, throws or discharges any stone or other missile into any water shall be guilty of an offence.

Penalty: Twenty pounds.

Use of artificial
bait.

11. Any person who, for the purpose of fishing in that portion of the Cotter River or its tributaries which lies above the junction of Paddy's River with the Cotter River or in any of the following rivers or creeks, namely:—

Paddy's River;
Gudgenby River;
Naas River;
and their tributaries,

uses or has in his possession, any bait other than artificial bait, shall be guilty of an offence.

Penalty: Five pounds.

Restriction
upon wading.

12. Any person who, for the purpose of fishing, wades in that portion of the Cotter River which lies between the Cotter Dam and the junction of Paddy's River with the Cotter River, shall be guilty of an offence.

Penalty: Five pounds.

Fish roe.

13. Any person who, for the purpose of fishing, uses, buys, sells, or has in his possession any fish roe, shall be guilty of an offence.

Penalty: Twenty pounds.

Disturbing
spawning fish,
&c.

14. Any person who wilfully disturbs any spawn, or spawning fish or any bed, bank or shallow on which there is any spawn or spawning fish, shall be guilty of an offence.

Penalty: Twenty pounds.

Exceptions.

15. The provisions of the last two preceding sections shall not apply in the case of any act performed with the consent of the Commission in writing previously obtained.

Obstruction of
fish.

16. Any person who places or uses in any waters any engine, instrument or device for the purpose of obstructing or hindering the free passage of fish in those waters, shall be guilty of an offence.

Penalty: Twenty pounds.

Method of
fishing.

17. Any person who takes or attempts to take in any river or lake, any fish by any means other than rod and line and a landing net or gaff (consisting of a plain metal hook without a barb) used in connection with the rod and line, shall be guilty of an offence.

Penalty: Twenty pounds.

18. Any person who unlawfully or maliciously cuts through, breaks down or otherwise destroys any dam, floodgate or sluice with intent to destroy or take fish, shall be guilty of an offence. Destruction of dams, &c.

Penalty: Fifty pounds.

19. Any person who causes or knowingly permits to flow, or puts or knowingly permits to be put, into any waters containing fish, any liquid or solid matter to such an extent as to cause the waters to be poisonous or injurious to fish or the spawning grounds, spawn or food of fish, shall be guilty of an offence. Impurities not to be placed in waters.

Penalty: Fifty pounds.

20.—(1.) Any person who—

(a) uses any explosive substance for the purpose of taking or destroying fish; or

(b) puts any poison, lime or noxious material in any waters with intent thereby to take or destroy fish, shall be guilty of an offence. Use of explosives and other noxious substances prohibited.

Penalty: Fifty pounds.

(2.) Where, immediately after an explosion in any waters, any person is found in possession of any explosive substance, that person shall (in the absence of proof to the contrary) be deemed to have used an explosive substance for the purpose of taking or destroying fish.

21. Where any person who is lawfully fishing, accidentally takes a fish, the taking of which is prohibited under this Ordinance, he shall not be liable to a penalty therefor provided he immediately returns the fish to the water with the least possible injury. Saving where fish taken accidentally.

22. A person shall not, without the permission in writing of the Commission (proof whereof shall lie upon the person accused) go upon any land in the Territory accepted by the Commonwealth in pursuance of the *Jervis Bay Territory Acceptance Act 1915* for the purpose of fishing for any variety of marine fish or crustacea or marine animal life in the waters of the sea adjoining that Territory, or do anything on that land in connexion with that fishing: Permit to go on lands for purpose of sea fishing.

Provided that this section shall not apply to fishing by means of a single line with not more than two hooks attached or by rod and line, or to the use of a landing net or gaff (consisting of a plain metal hook without a barb) in connexion with the line or rod and line.

Penalty: Twenty pounds.

23. All boats, engines, and other articles used, or in the possession of any person, and all fish taken, contrary to the provisions of this Ordinance, shall be forfeited to the Commission. Forfeiture of illegal instruments.

Seizure of
forfeited
instruments.

24.—(1.) Any officer may seize any fish, boat, engine, or other article which is forfeited or which he has reasonable grounds to believe has been forfeited under the last preceding section of this Ordinance, and take it before a Court of Petty Sessions.

(2.) The Court may, after such notice (if any) to such person (if any) as it thinks fit to direct, order that any fish implement or substance brought before it be forfeited to the Commission or be returned to the person from whom it was taken.

(3.) Where any prosecution is pending, an order for forfeiture or return of any fish, engine, or other article, shall not be made until the prosecution is determined.

(4.) All forfeited fish, engines or articles shall be dealt with as the Commission directs, and pending that direction, shall be kept in such custody as the court directs.

Proof of
illegality.

25. In all judicial proceedings under this Ordinance, the onus of proving the illegality of any seizure shall lie upon the person setting up the illegality.

Proof of
exception, &c.

26. In any proceeding against any person for any contravention of this Ordinance, the onus of proving the possession of any licence required to be held by that person, or the purpose for which, or the intent with which the act complained of was done, or that the person was exempted from the operation of the provision contravened, shall lie upon the defendant.

Proof of notices
by production
of *Gazette*.

27. The production of the *Gazette* purporting to contain any notice given or action done by the Commission in pursuance of this Ordinance shall be received in all courts as sufficient evidence that the notice or act has been duly given or done.

Regulations.

28. The Commission may make regulations, not inconsistent with this Ordinance, prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance, and in particular, prescribing matters providing for and in relation to—

- (a) the conditions under which fishing may be carried on;
- (b) the issue, form, terms, conditions, duration, suspension, cancellation, and return of licences to take fish generally or fish of any particular kind, and in respect of the use of boats for fishing, and the fees to be paid in respect of the issue of licences;
- (c) the times, periods, and places, at or during which the taking of the several kinds or species of fish shall commence and cease, or be prohibited or permitted;
- (d) the minimum size of fish of any particular kind or species that may be taken;

- (e) the prohibition of the taking of any undersized, unclean, or unseasonable fish ;
- (f) the prohibition of the buying, selling, or offering or exposing for sale, or the having possession of, any undersized, unclean, or unseasonable fish, or of any fish the taking of which is contrary to the provisions of this Ordinance ;
- (g) the taking of oysters and the sale thereof including the licensing of persons to sell oysters and the fees for those licences ;
- (h) the prohibition of the doing of any matter or thing whatsoever tending in the opinion of the Commission to be detrimental to the salmon or freshwater fisheries or to fishing ;
- (i) the imposition of penalties for breaches of the regulations, including the imposition of different penalties for successive breaches, and daily penalties for continuing breaches, but so that the penalty for the breach of any regulation shall not exceed Fifty pounds, nor in the case of a continuing breach, Five pounds, in respect of any day during which the breach is continued, and with power also to impose, in addition to any other penalties imposed for the breaches a special penalty not exceeding Five pounds in respect of each and every fish, or fish of any kind or species, taken, bought, sold, offered, or exposed for sale, or in the possession of any person in breach of the provisions of the regulations, and a special penalty not exceeding Five pounds in respect of each and every engine or other article of any kind whatsoever used or in the possession of any person in breach of the provisions of the regulations.

Dated this twenty-seventh day of February, One thousand nine hundred and twenty-nine.

STONEHAVEN

Governor-General.

By His Excellency's Command,

C. L. A. ABBOTT

Minister of State for Home Affairs.

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