



Parliament of Western Australia



JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

REPORT
ON THE
FISHERIES AMENDMENT REGULATIONS

1992

No's. 5 and 6

Ninth Report

November 1992

Joint Standing Committee on Delegated Legislation

Membership

Hon Tom Helm MLC (Chairman)
Hon Margaret McAleer MLC (Deputy Chairman)
Hon Reg Davies MLC
Hon Beryl Jones MLC
Mr Bob Wiese MLA
Dr Judy Edwards MLA
Mr Phil Smith MLA
Mr Bob Bloffwitch MLA

Advisory/Research Officer

Mrs Jane Burn

Committee Clerk

Ms Jan Paniperis

Terms of Reference

5. *It is the function of the Committee to consider and report on any regulation that:*
 - (a) *appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;*
 - (b) *unduly trespasses on established rights, freedoms or liberties;*
 - (c) *contains matter which ought properly to be dealt with by an Act of Parliament;*
 - (d) *unduly makes rights dependent upon administrative, and not judicial, decisions.*

7. *If the Committee is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House.*

Ninth Report by the Joint Standing Committee on Delegated Legislation

It is the function of the Joint Standing Committee on Delegated Legislation to consider and report on any regulation that:

- (a) *appears not to be within power or not to be in accord with the objects of the act pursuant to which it purports to be made;*
- (b) *unduly trespasses on established rights, freedoms and liberties;*
- (c) *contains matter which ought properly to be dealt with by an Act of Parliament; or*
- (d) *unduly makes rights dependent upon administrative, and not judicial, decisions.*

The Committee is also empowered under Rule 7 of its Standing Rules to report to the House:

"If [the Committee] is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House."

Under Rule 7 of its Standing Rules, the Joint Standing Committee on Delegated Legislation presents the following report on regulations made under the *Fisheries Act 1905*.

A handwritten signature in black ink, appearing to read 'T. R. Helm', written over a horizontal line.

HON TOM HELM MLC

CHAIRMAN
November 1992

Report by the Joint Standing Committee on Delegated Legislation
on
Fisheries Amendment Regulations (No. 5) and
Fisheries Amendment Regulations (No. 6)

FISHERIES AMENDMENT REGULATIONS (No. 5)

The Fisheries Amendment Regulations (No. 5) were gazetted on June 16 1992 under the *Fisheries Act 1905* and tabled on August 25 1992.

Background

Following an extensive public consultation process, a Ningaloo Marine Park Management Plan was approved by the Ministers for Fisheries and the Environment. The plan sets down the guiding principles for the management of fish resources in Ningaloo Marine Park ("the Park"), but does not set controls and limits.

The first stage of the process of introducing controls was gazetted in the form of notices relating to both recreational and commercial fishing in the Marine Park on 11 October 1991¹. The *Ningaloo Marine Park (Recreational Fishing) Notice* established sanctuary, recreational and general use zones, prescribed permitted fishing areas and fishing methods and prohibited the taking of fish while using diving apparatus.

The *Ningaloo Marine Park (Professional Fishing) Notice* prohibited the taking of fish by professional fishermen unless authorised by the Director of Fisheries.

The regulations² under consideration in this report relating to recreational fishing in the Park are the second stage in the process and introduce the following provisions:-

- (a) bag and possession limits for specified species of fish; [*Regs. 12EC and 12ED*]
- (b) the requirement that fish may be gilled and gutted but not filleted; [*Reg. 12EC*]
- (c) the labelling of fish and rock lobster to be labelled in a specified manner; [*Reg. 12EF*]
- (d) the presumption of possession in the absence of certain identification by a Fisheries Inspector; [*Reg. 12EG*]
- (e) the exemption of professional fishermen and bait fish from the provisions of the regulations. [*Reg. 12EH*]

Having identified a number of concerns following examination of the regulations in conjunction with the explanatory memorandum supplied by the Department of Fisheries, the Committee met with departmental officials on August 3 1992 to discuss those concerns.

¹ see Appendix A

² see Appendix B

The Committee's Concerns

1. Possession of fish within the Ningaloo Marine Park

Trial period of 12 months

From the supporting documentation supplied by the Department, it was evident that the Department had themselves identified problems with the implementation of proposals for possession limits within the Park and the scheme was recommended –

"on the clear understanding that it is a trial period only, particularly for the first twelve months".

That qualification on the introduction of possession limits was repeated in a summary of the recommendations to the Minister but is not reflected in the inclusion of a sunset clause in the gazetted regulations.

In evidence given to the Committee, departmental officials indicated that there was no question that the operation of the regulations relating to possession limits would be internally reviewed after 12 months but they appeared not to have considered the possibility of formally including the requirement for review in the regulations.

RECOMMENDATION 1

That the facility for a review after 12 months of *Regulations 12EC, 12EF and 12EG* relating to possession limits be formally included as part of the regulations as recommended to the Minister by the Executive Director, Fisheries.

2. Inspectors' Powers

The question of the enforcement of possession limits has highlighted an area of general and ongoing concern to the Committee – that of the extent of powers given to inspectors.

The Committee is aware that the authority for the powers arises from the *Fisheries Act 1905*, but under s.6(1)(a), the Governor is empowered to make regulations

"S. 6 (a) defining the duties of inspectors and other persons upon whom any duty or authority is imposed or conferred by this Act or the regulations, defining the fisheries or parts of the State to which those duties relate and the extent of the authority conferred....."

From preliminary research, inspectors' powers under the *Fisheries Act 1905* are representative of powers under other legislation and most have the potential to fulfil all of the following criteria for a recommendation of disallowance by the Committee –

- * *unduly trespasses on established rights, freedoms and liberties;*
- * *contains matter which ought properly to be dealt with by an Act of Parliament; or*
- * *unduly makes rights dependent upon administrative, and not judicial, decisions.*

The Committee has approached the issue from two aspects –

- (i) the extent of inspectors' powers, and
- (ii) the appointment of honorary inspectors

(i) The extent of inspectors' powers

Powers given to inspectors are intrusive, and without question, capable of trespassing on individual rights, freedoms and liberties.

In consideration of inspectors' powers, the New Zealand Law Commission stated –

".....Thus the most significant response powers, even should a state of emergency be proclaimed, will continue to be those available to Inspectors and Chief Officers in their own right. We are concerned with the substance of those powers. Little is to be gained by a discussion as to whether they are to be described as "emergency" or "normal" powers. As in all situations involving the exercise of public power, the object must be to ensure that the powers available are necessary and justified and that there are appropriate controls over the circumstances in which they are exercised. The need to respect individual rights must be balanced against the rights of others and of the community at large." ³

The following extracts from the *Fisheries Act 1905* are given as illustrations, and are typical examples of inspectors' powers throughout the statute book :

Section 7 – Right of Entry

"Every inspector shall have the right of entry on all lands whatsoever for the purpose of giving effect to or carrying out any of the provisions of this Act or the regulations."

Section 8 – Inspector may requisition boats etc

"(1) Any inspector may require any person in charge of any boat to permit such inspector to use such a boat, and any engine or oars or paddles and rowlocks therein, for the purpose of carrying out his duties under or enforcing the provisions of this Act."

³ New Zealand Law Commission : *Final Report on Emergencies* : December 1991 at page 236

[Reasonable compensation is payable under s.8(3).]

Section 40 – Power to arrest offenders

"Any inspector may, with or without warrant, arrest any person who the inspector has reason to believe has committed an offence against any of the provisions of this Act or the regulations.

Section 42 – Search for and seizure of fish

"All fish of which the taking or possession is prohibited by this Act or the regulations may be searched for, seized, and forfeited by any inspector or by any person holding the written authority of any justice, or any search warrant under the hand and seal of any justice, or by any person authorised by any regulation."

Section 49 – Inspectors powers generally

"(3) For the purposes of this Act, and in addition to the particular powers more specifically referred to in this Act and the regulations, every inspector appointed under this Act, including any police officer exercising the powers of any inspector pursuant to section 5 (3), has and may exercise the power –

- (a) to enter and search any premises or place at any time without warrant;*
- (b) to stop and detain, inspect and search any vehicle, boat or aircraft;*
- (c) to inspect any fish, or any net, rock lobster pot, appliance or equipment capable of being used for fishing; and*
- (d) to seize, take, secure or cause to be removed any fish which he has reason to believe has been taken, or any boat or other thing which he has reason to believe has been, is, or is intended to be or about to be used, in breach of this Act or the regulations.*

The Committee is aware that the introduction of possession limits will not extend the powers of inspectors; the power of entry and search already exists by virtue of s. 49B. However, the need to enforce the possession limits prescribed under *Regulations 12EC, 12EF, and 12EG* is likely to give rise to a more frequent use of the power to search residences, both temporary in the form of campsites within the Ningaloo Marine Park, and permanent, in the form of houses. Consideration of this aspect of the regulations has given rise to a general concern at the ability for any inspector to enter and search any premises at any time without a warrant.

S.4(3)(e) of the *Queensland Legislative Standards Act 1992*, establishes a number of "fundamental legislative principles" underlying a parliamentary democracy based on the Rule of Law. This section states –

"Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation – (inter alia)

- "(e) confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer;"*

The extent of police powers of search and seizure are frequently targeted for criticism as a

potential abuse of individual rights and freedoms. However, a *police officer*, who reasonably suspects or believes an offence is being, has been, or is about to be committed, and, as a consequence of that belief, wishes to search any premises, is required to swear out a complaint before a Justice of the Peace in order to obtain a *search warrant*. Different forms of search warrant are applicable depending on the statute under which a warrant is sought.

There is a common law power which permits a police officer to enter and search premises **without a warrant** if the officer reasonably suspects that there is a **life-threatening** situation. Equally, under s. 564 of the *Criminal Code*, an officer may enter premises without a warrant if in pursuit of a person suspected of committing an **arrestable offence**.

Where there is a dispute as to the validity of a search warrant, the courts expect strict compliance with the relevant legislative authority to protect the rights of the individual.

In *R. v Tillett ; Ex parte Newton*⁴, Fox J. stated –

"As a necessary corollary to the power of seizure a particular offence must be selected and specified both in the information (complaint) and the warrant. This is so even where the statute simply uses the words 'any offence' and makes no clear reference to a need to specify the particular offence."

Under ss. 5 (2) and (3) of the *Fisheries Act 1905* –

"(2) It shall be the duty of every police officer to aid and assist inspectors in enforcing compliance with the provisions of this Act.

(3) All police officers shall ex officio and within their respective districts be, and have the powers and authorities of, inspectors of fisheries."

By virtue of s. 5(3), a police officer acting as an *ex officio* Fisheries Inspector has greater powers than when acting as a police officer, and may enter and search any premises **at any time without warrant**. Furthermore, if, in the course of a search for fish taken in contravention of the regulations, the officer discovers some other illegal substance such as drugs, under common law, production of that item as evidence in a prosecution of the owner of that property may, at the court's discretion, be permissible.⁵

The Committee has drawn its concerns to the attention of the Honourable Minister for Fisheries who has undertaken to take them into consideration in the current review of the *Fisheries Act 1905*.⁶

The Committee draws this anomaly to the attention of the House in order to highlight the extent of the statutory powers of Fisheries inspectors in the pursuit of undersized or otherwise illegal fish, compared with the powers of police officers in pursuit of drugs or stolen property.

⁴ [1969] 14 F.L.R. 101

⁵ *Kuruma, Son of Kainui vs the Queen* [1955] AC 197
Bunning vs Cross [1978] 141 COR 54

⁶ See Appendix C

(ii) **The appointment of honorary inspectors**
Under s. 5 (1d) of the *Fisheries Act 1905* –

"The Minister may appoint persons to be honorary inspectors of fisheries or honorary licensing officers to carry out such of the duties of an inspector of fisheries or licensing officer, respectively as the Minister determines in relation to any specified part of the State."

Under s.5 (1f) –

"The Minister may, with the approval of the Public Service Board, engage under contract for services any consultant or professional, technical or other assistance, and may authorise a person so engaged to carry out such of the duties of an inspector of fisheries as the Minister determines."

The Committee's concern at the extent and gravity of the powers given to inspectors and the potential for trespass on individual rights has been stated.

This concern is aggravated by the possibility that exercise of the powers may be delegated to unskilled or inappropriate persons by virtue of s. 5 (3) of the Act, and was also brought to the attention of the Health Department in connection with Emergency Powers and *Health (Asbestos) Regulations* under the *Health Act*. In both instances, extensive powers of entry, search and removal are delegated to "persons authorized by the Executive Director, Public Health".

It is acknowledged that the delegation of extensive powers to inappropriate persons is not a probable occurrence, but as long as it remains a *possible* occurrence, the concern is valid.

The Committee has drawn its concerns to the attention of the Honourable Minister for Fisheries who has undertaken to take them into consideration in the current review of the *Fisheries Act 1905*.⁷

RECOMMENDATION 2

That in the review and redrafting of the Fisheries Act –

- (a) the fundamental legislative principle of protection of individual rights and liberties be paramount;**
- (b) the power of entry and search without warrant be permissible only in certain defined circumstances;**
- (c) that inspectorial powers be delegated only to persons specified in the primary legislation;**
- (d) that the powers delegated to 'honorary' inspectors be qualified in the legislation.**

⁷ see Appendix C

3. Minimum Penalties

The Committee is concerned at the provision in s. 47(2) of the *Fisheries Act 1905* for minimum penalties for offences against the Act –

"Wherever it is provided by this Act that a person who commits an offence is liable to a penalty not less than an amount specified, that amount so specified is a minimum penalty irreducible in mitigation notwithstanding the provisions of any Act."

The effect of such a provision is to deny the courts the discretion to impose less than the minimum, or no penalty at all in circumstances in which they might otherwise have considered that appropriate. The Committee has identified examples of other minimum penalties in the *Health Act* (s. 360 (3)) and is of the opinion that this is a draconian and undesirable concept which should be removed from all legislation.

The Committee has drawn its concerns to the attention of the Honourable Minister for Fisheries who has undertaken to take them into consideration in the current review of the *Fisheries Act 1905*.⁸

Your Committee draws this matter to the attention of the House.

RECOMMENDATION 3

That in the review and redrafting of the *Fisheries Act*, consideration should be given to the removal of the facility for imposing minimum penalties

⁸ see Appendix C

FISHERIES AMENDMENT REGULATIONS (No. 6)

The Fisheries Amendment Regulations (No. 6) were gazetted on June 5 1992 under the *Fisheries Act 1905* and tabled on August 25 1992.⁹

Background

The regulations implement a number of the recommendations of the *Recreational Fishing Advisory Council*, formulated after extensive public consultation which attracted some 1400 submissions on the need for recreational fisheries management. The recommendations include –

- (a) the introduction of recreational fishing licences for the taking of abalone, trout, redfin perch, freshwater cobbler;
- (b) the provision for an "umbrella" licence for recreational fishing licences, and
- (c) revised fees for the remaining recreational licences – for taking marron and rock lobster and for using a gillnet or haulnet.

The *Advisory Council* considered that the most critical issue for the future management of recreational fishing was the availability of funds for management programs. There was strong opposition to the concept of an all-embracing recreational fishing licence but the majority of public submissions supported the principle of a recreational fishing licence *provided that the revenue gained from licence fees was held in a trust fund exclusively for the use of recreational fisheries management.*

The Council's report, after consideration of public submissions and the situation in other States and Territories included the following recommendations:

Recommendation 57 – Trust fund for fees

All revenue collected from recreational fishing licences should be placed in a special Trust Account, dedicated to recreational fishing management in WA.

Recommendation 59 – Funding priorities

*The committee has identified that education and research should receive first priorities for funding.*¹⁰

Having considered the Regulations and the explanatory memoranda supplied by the Fisheries Department, members were concerned that no Trust Fund "*dedicated to recreational fishing management in WA*" appeared to have been established, although the establishment of such a Fund appeared to be the premise on which the majority of public submissions were prepared to support the concept of recreational fishing licences. Officials were invited to meet with the Committee on August 3 to clarify this omission.

As the Committee was already aware, revenue must be paid into the Consolidated Revenue Fund unless an alternative fund has been set up by amendment to the Act. The Fisheries Research and Development Fund was established under s. 35L of the *Fisheries Act 1905*.

⁹ See Appendix D

¹⁰ See Appendix E : Extract of the Recreational Fishing Advisory Council Final Report : ?May 1992

"35L. (1) For the purposes of this Part there shall be established and kept at the Treasury an account to be called the "Fisheries Research and Development Fund", which shall be administered by the Minister.

The monies in the Fund may be used and applied by the Minister in such manner and in such proportion as the Minister thinks fit for purposes specified in the Act. [S.35L (3)]

In evidence given to the Committee, members were informed that a "*Recreational Fishing Trust Account*" had been set up by agreement between the Executive Director, Fisheries and the Assistant Under Treasurer of the Treasury Department. The Department had been informed that monies collected by virtue of regulation 3A (c) of the *Fisheries Regulations* could not be paid directly into the Account but had to be paid first into CRF and then re-appropriated to the Account.

The Department anticipated that it could be a further two years before the introduction of the necessary legislative amendment to ensure that revenue from the issue of recreational fishing licences was held in a Fund for the *exclusive* purpose of recreational fisheries management programs. Any monies paid directly into CRF could conceivably be utilised for assisting the fishing industry or the payment of compensation for the withdrawal or diminution of fishing rights.

Your committee has drawn to the attention of the Honorable Minister for Fisheries its concern at the introduction of fees conditional on the revenue being utilised for a certain purpose without the fulfilment of that prerequisite by the necessary statutory amendment.

The Committee stated its opinion that the Fund should have been established before the regulations implementing the licence proposals were gazetted and that an estimated two years' delay before the necessary statutory amendment would be effected was unacceptable in the light of the condition upon which imposition of a recreational licence was approved.

The Minister expressed his appreciation to the Committee for bringing this matter to his attention and gave the Committee his assurance that the necessary amendment to the *Fisheries Act* will be introduced in this session of Parliament.¹¹

The Committee notes the assurance given by the Honourable Minister for Fisheries that the required statutory amendment to establish a Trust Fund as the depository for revenue from recreational fishing licences will be introduced during this session of Parliament.

RECOMMENDATION 4

That Recommendations 57 and 59 of the Recreational Fishing Advisory Council¹² be implemented as soon as possible by amendments to the *Fisheries Act 1905*.

¹¹ see Appendix C

¹² see page 10 above

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1

That the facility for a review after 12 months of *Regulations 12EC, 12EF and 12EG* relating to possession limits be formally included as part of the regulations as recommended to the Minister by the Executive Director, Fisheries.

RECOMMENDATION 2

That in the review and redrafting of the Fisheries Act –

- (a) the fundamental legislative principle of protection of individual rights and liberties be paramount;**
- (b) the power of entry and search without warrant be permissible only in certain defined circumstances;**
- (c) that inspectorial powers be delegated only to persons specified in the primary legislation;**
- (d) that the powers delegated to 'honorary' inspectors be qualified in the legislation.**

RECOMMENDATION 3

That in the review and redrafting of the *Fisheries Act*, consideration should be given to the removal of the facility for imposing minimum penalties.

RECOMMENDATION 4

That Recommendations 57 and 59 of the Recreational Fishing Advisory Council be implemented as soon as possible by amendments to the *Fisheries Act 1905*.

FISHERIES

FI301

FISHERIES ACT 1905

NINGALOO MARINE PARK (RECREATIONAL FISHING) NOTICE 1991

Notice No. 503

Made by the Minister under sections 9, 10 and 11.

Citation

1. This notice may be cited as the *Ningaloo Marine Park (Recreational Fishing) Notice 1991*.

Interpretation

2. In this notice unless the contrary intention appears—

"general use zone" means those waters of the Ningaloo Marine Park other than those described in Schedules 2 and 3;

"Ningaloo Marine Park" means the waters described in Schedule 1;

"Plan No. 1735" means the Department of Conservation and Land Management plan held for public inspection in the Fisheries Department, 108 Adelaide Terrace, East Perth* which—

- (i) describes and names the sanctuary zones; and
- (ii) describes the general use and recreation zones; of Ningaloo Marine Park;

"recreation zone" means the waters described in Schedule 3;
"rock lobster" means all species of fish of the genus *Panulirus*; and
"sanctuary zone" means the waters described in Schedule 2.

Description of waters

3. (1) The waters described in Schedule 1 shall constitute the Ningaloo Marine Park.
- (2) The waters referred to in subclause (1) shall be divided into zones as follows:
- (a) sanctuary zones;
 - (b) recreation zones; and
 - (c) general use zone.

Exemption

4. The provisions of this notice shall apply to all persons other than—
- (a) the holder of a Professional Fisherman's Licence; or
 - (b) a person who has been exempted in writing by the Director from any provision of this notice.

Sanctuary zones

5. (1) No person shall take, or attempt to take, any fish by any means from a sanctuary zone unless authorised in accordance with clause 4(b).
- (2) The owner or person in charge of a boat which is in a sanctuary zone, shall not carry or permit a person to carry in that boat, any device used to take fish unless that device is completely stowed—
- (a) within the hull; or
 - (b) on the deck;
- of that boat.

Permitted fishing areas and fishing methods

6. (1) A person shall not take or attempt to take fish by any means from a recreation zone or the general use zone except by—
- (a) (i) handline; or
 - (ii) rod, reel and line;
 - with no more than 3 hooks attached to the line;
 - (b) nets in the waters described in Schedule 5 provided that—
 - (i) the person using the net remains within 100 metres of the net at all times;
 - (ii) one end of the net is set on the foreshore above the waterline at all times;
 - (iii) the net is only used between 0530 hours and 0830 hours, and 1600 hours and 1900 hours on any day;
 - (iv) the net has a mesh of not less than 63 millimetres and not more than 90 millimetres; and
 - (v) all fish are removed from the net every hour while set;
 - (c) by speargun, harpoon, hawaiian sling or other pointed instrument in the waters described in Schedule 4;
 - (d) hand where no other instrument is used; or
 - (e) hand held hook or snare to take rock lobsters.
- (2) A person shall not take, or attempt to take, fish in the waters of the recreation zones described in items 2(b), 4(a) and 6(a) of Schedule 3—
- (a) beyond 100 metres from the high water mark;
 - (b) by use of a boat;
 - (c) except by—
 - (i) handline; or
 - (ii) rod, reel and line;
 - with no more than 3 hooks attached to the line.

Prohibition on use of diving apparatus

7. No person shall take, or attempt to take, fish within the Ningaloo Marine Park while using any diving apparatus which uses compressed air.

Exceptions

8. Where an exception to a prohibition is granted under the provisions of this notice, any such exception does not extend to, or in any way amend, the requirements or restrictions imposed under the Fisheries Act 1905 on the taking of any fish referred to in this notice.

Determination of position by reference to the Australian Geodetic Datum

9. (1) Where, for the purposes of this notice it is necessary to determine a position on the surface of the Earth by geographical coordinates, that position shall be determined on the Australian Geodetic Datum which is defined by an ellipsoid having a semi-major axis (equatorial radius) of 6,378,160 metres and a flattening of 1/298.25 and fixed by the position of the origin being the Johnston Geodetic Station in the Northern Territory of Australia.
- (2) The Johnston Geodetic Station referred to in subclause (1) shall be taken to be situated at 25°56'54.5515" south latitude and at 133°12'30.0771" east longitude and to have a ground level elevation of 571.2 metres above the ellipsoid referred to in that subclause.

Revocation

10. Notice No. 331 published in the *Gazette* of 11 November 1988 is cancelled.

—————
Schedule 1

All waters of the Indian Ocean and Exmouth Gulf within the boundaries of the Ningaloo Marine Park Reserve No. 2 shown on Plan No. 1735.

—————
Schedule 2

All waters described and named as the Bundegi, Mangrove, Mandu, Osprey, Cloates, Dugong, Maud and Pelican Sanctuary Zones shown on Plan No. 1735.

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Schedule 3

1. North West Cape

All the waters of Exmouth Gulf and the Indian Ocean bounded by a line commencing at the intersection of the high water mark and latitude 21°52'59.97" south on the western side of Exmouth Gulf; then extending east along latitude 21°52'59.97" south to its intersection with longitude 114°12'16.21" east; thence north to the intersection of latitude 21°49'12.61" south and longitude 114°12'16.13" east; thence north west to the intersection of latitude 21°46'10.68" south and longitude 114°10'22.19" east; thence south west to the intersection of latitude 21°47'51" south and longitude 114°05'28.19" east; thence south west to the intersection of latitude 21°51'38.6" south and longitude 113°58'26.5" east; thence south westerly to the intersection of latitude 21°55'22.8" south and longitude 113°55'05" east; thence south to the intersection of latitude 21°59'23" south and longitude 113°54'19.6" east; thence south to the intersection of latitude 22°04'37" south and longitude 113°52'49.4" east; thence east to the intersection of latitude 22°04'53.7" south and the high water mark; thence north along the high water mark on the mainland to the commencing point.

2. (a) Pilgramunna/Cullerriman

All the waters of the Indian Ocean bounded by a line commencing at the intersection of latitude 22°09'35.1" south and the high water mark on the mainland; thence extending west to the intersection of latitude 22°09'24" south and longitude 113°51'19.9" east; thence south to the intersection of latitude 22°13'22.5" south and longitude 113°49'47" east; thence east to the intersection of latitude 22°13'35.4" south and longitude 113°50'24.6" east; thence south easterly along a line to the intersection of 22°13'40.8" and the high water mark on the mainland; thence generally north along the high water mark to the commencing point.

(b) Cullerriman

All the waters of the Indian Ocean bounded by a line commencing at the intersection of latitude 22°13'40.8" south and the high water mark on the mainland; thence extending west to the intersection of latitude 22°13'35.4" south and longitude 113°50'24.6" east; thence south to the intersection of latitude 22°14'56.9" and longitude 113°49'52.8" east; thence east to the intersection of latitude 22°15'00.3" and the high water mark on the mainland; thence generally north to the commencement point.

3. Winderabandi

All the waters of the Indian Ocean bounded by a line commencing at the intersection of latitude $22^{\circ}18'30.7''$ south and the high water mark on the mainland; thence extending west to the intersection of latitude $22^{\circ}18'02.8''$ south and longitude $113^{\circ}47'43.9''$ east; thence south to the intersection of latitude $22^{\circ}02'08.4''$ south and longitude $113^{\circ}44'15.5''$ east; thence south to the intersection of latitude $22^{\circ}29'59.9''$ south and longitude $113^{\circ}40'19.2''$ east; thence south to the intersection of latitude $22^{\circ}35'05.4''$ south and longitude $113^{\circ}38'19.5''$ east; thence east along latitude $22^{\circ}35'05.4''$ to its intersection with the high water mark on the mainland; thence generally north along the high water mark to the commencing point.

4. (a) Ningaloo Homestead

All the waters of the Indian Ocean bounded by a line commencing at the intersection of latitude $22^{\circ}39'59.9''$ south and the high water mark on the mainland; thence extending south to the intersection of latitude $22^{\circ}41'52.59''$ south and longitude $113^{\circ}40'11.5''$ east; thence east to the intersection of latitude $22^{\circ}41'52.59''$ east and the high water mark on the mainland; thence generally north along the high water mark to the commencing point.

(b) Jane Bay

All the waters of the Indian Ocean bounded by a line commencing at the intersection of latitude $22^{\circ}41'52.59''$ south and the high water mark on the mainland; thence west along latitude $22^{\circ}41'52.59''$ south to its intersection with longitude $113^{\circ}37'54.57''$ east; thence south easterly to the intersection of latitude $22^{\circ}46'39''$ south and longitude $113^{\circ}41'50.2''$ east; thence east along latitude $22^{\circ}46'39''$ south to its intersection with the high water mark on the mainland; thence generally north along the high water mark to the commencing point.

5. Bruboodjoo

All the waters of the Indian Ocean bounded by a line commencing at the intersection of latitude $22^{\circ}54'44''$ south and the high water mark on the mainland; thence extending west along latitude $22^{\circ}54'44''$ south to its intersection with longitude $113^{\circ}45'42.3''$ east; thence south to the intersection of latitude $23^{\circ}02'48.6''$ south and longitude $113^{\circ}46'05''$ east; thence south west to the intersection of latitude $23^{\circ}04'17.14''$ south and longitude $113^{\circ}44'29.39''$ east; thence south to the intersection of latitude $23^{\circ}06'00.3''$ south and longitude $113^{\circ}44'31.8''$ east; thence south east to the intersection of latitude $23^{\circ}07'15.1''$ south and the high water mark on the mainland; thence generally north along the high water mark to the commencing point.

6. (a) Coral Bay

All the waters of the Indian Ocean bounded by a line commencing at the intersection of latitude $23^{\circ}08'40.3''$ south and the high water mark; thence extending west along latitude $23^{\circ}08'40.3''$ south to its intersection with longitude $113^{\circ}45'53.5''$ east; thence south to the intersection of latitude $23^{\circ}09'35.1''$ south and longitude $113^{\circ}45'46.4''$ east; thence east to the intersection of latitude $23^{\circ}09'35.1''$ south and the high water mark on the mainland; thence generally north along the high water mark to the commencing point.

(b) Anderson

All the waters of the Indian Ocean bounded by a line commencing at the intersection of latitude $23^{\circ}09'35.1''$ south and the high water mark on the mainland; thence extending west along latitude $23^{\circ}09'35.1''$ south to its intersection with longitude $113^{\circ}44'39.6''$ east; thence south to the intersection of latitude $23^{\circ}20'46.4''$ and longitude $113^{\circ}46'23.7''$ east; thence east along latitude $23^{\circ}20'46.4''$ south to its intersection with the high water mark on the mainland; thence extending generally north along the high water mark to the commencing point.

7. Warroora

All the waters of the Indian Ocean bounded by a line commencing at the intersection of latitude $23^{\circ}24'40.4''$ south and the high water mark on the mainland; thence extending west along latitude $23^{\circ}24'40.4''$ south to its intersection with longitude $113^{\circ}46'14.7''$ east; thence south to the intersection of latitude $23^{\circ}31'18''$ south and longitude $113^{\circ}44'58.1''$ east; thence west along $23^{\circ}31'18''$ south to its intersection with longitude $113^{\circ}43'12.4''$ east; thence south west to the intersection of latitude $23^{\circ}34'$ south and longitude $113^{\circ}41'50.4''$ east; thence east along latitude $23^{\circ}34'$ south to its intersection with the high water mark on the mainland thence generally north to the commencing point.

Schedule 4

All waters other than—

- (1) Sanctuary Zones;
- (2) Recreation Zones between Tantabiddi Well and Winderabandi Point;
- (3) Cullerriman, Ningaloo Homestead and Coral Bay as described in Items 2(b), 4(a) and 6(a) of Schedule 3.

Schedule 5

1. Neds/Mesa Camps

The waters of the Indian Ocean between latitude 22°00'21" south and latitude 21°59'53" south.

2. Winderabandi Point

All the waters of the Indian Ocean bounded by a line commencing at the intersection of latitude 22°29'53" south and the high water mark on Winderabandi Point; thence extending due north to its intersection with latitude 22°29'45" south; thence extending east along latitude 22°29'45" south to its intersection with the high water mark on the mainland; thence extending generally in a south westerly direction along the high water mark to the commencing point.

3. Bruboodjoo Point

All the waters of the Indian Ocean bounded by a line commencing at the intersection of latitude 22°58'37" south and the high water mark on Bruboodjoo Point; thence extending due north to its intersection with latitude 22°58'03" south; thence extending east along latitude 22°58'03" south to its intersection with the high water mark on the mainland; thence extending generally south along the high water mark to the commencing point.

4. 14 Mile Warroora Station

The waters of the Indian Ocean between latitude 23°17'19" south and latitude 23°16'36" south.

Dated this 15th day of August 1991.

GORDON HILL, Minister for Fisheries.

* Copies of Plan No. 1735 are also held for public inspection at the Department of Conservation and Land Management's offices at 50 Hayman Road, Como and Lot 391, Thew Street, Exmouth, the Milyerling Visitor Centre, Cape Range National Park and the Fisheries Department District Office, Lot 375, Maidstone Crescent, Exmouth.

FI302

FISHERIES ACT 1905

NINGALOO MARINE PARK (PROFESSIONAL FISHING) NOTICE 1991

Notice No. 502

Made by the Minister under sections 9 and 10.

Citation

1. This notice may be cited as the *Ningaloo Marine Park (Professional Fishing) Notice 1991*.

Interpretation

2. In this notice unless the contrary intention appears—

"Plan No. 1735" means the Department of Conservation and Land Management plan held for public inspection in the Fisheries Department, 108 Adelaide Terrace, East Perth (*) which—

- (i) describes and names the sanctuary zones; and
- (ii) describes the general use and recreation zones; of Ningaloo Marine Park;

"Ningaloo Marine Park" means the waters described in Schedule 1.

Prohibition on taking fish

3. Unless otherwise authorised in writing by the Director, the holder of a professional fisherman's licence shall not take, or attempt to take, any species of fish by any means in the waters described in Schedule 2.

Schedule 1

All waters of the Indian Ocean and Exmouth Gulf within the boundaries of the Ningaloo Marine Park Reserve No. 2 shown on Plan No. 1735.

Schedule 2

All waters of the Indian Ocean and Exmouth Gulf described as sanctuary or recreation zones within the boundaries of the Ningaloo Marine Park Reserve No. 2 shown on Plan No. 1735.

Dated this 15th day of August 1991.

GORDON HILL, Minister for Fisheries.

*Copies of Plan No. 1735 are also held for public inspection at the Department of Conservation and Land Management's offices at 50 Hayman Road, Como and Lot 391, Thew Street, Exmouth, the Milyering Visitor Centre, Cape Range National Park and the Fisheries Department District Office, Lot 375, Maidstone Crescent, Exmouth.

4. The functions of the Academic Board shall include—
- (a) the discussion and submission to the Council of opinions and recommendations on academic policy, academic development, the admission of students, instruction, studies and examinations, research, the admission to degrees, the discipline of the University and any other matters which in the opinion of the Academic Board are of an educational nature;
 - (b) the furnishing to the Council of reports on all matters referred to it by the Council for consideration; and
 - (c) such other acts or matters as may be conferred or imposed by the Rules.
5. The Academic Board shall have all such powers as may be necessary to discharge its functions.

The Common Seal of the Curtin University of Technology was hereto affixed on the 11th day of March 1992 by the authority of the Council.

JOHN E. MALONEY, Vice-Chancellor.

P. R. MAIN, Administrative Secretary.

FISHERIES

FI301

FISHERIES ACT 1905

FISHERIES AMENDMENT REGULATIONS (NO. 5) 1992

Made by His Excellency the Governor in Executive Council.

Citation

1. These regulations may be cited as the *Fisheries Amendment Regulations (No. 5) 1992*.

Commencement

2. These regulations come into operation on 19 June 1992.

Principal regulations

3. In these regulations the *Fisheries Regulations 1938** are referred to as the principal regulations.

[* Reprinted as at 15 September 1988.
For amendments to 22 May 1992 see 1991 Index to Legislation of Western Australia, pp. 324-25 and Gazettes of 31 January, 28 February, 27 March and 8 May 1992.]

Regulations 12EB to 12EH inserted

4. After regulation 12EA of the principal regulations the following regulations are inserted —

Interpretation

- “ 12EB. For the purposes of regulations 12EC, 12ED, 12EE, 12EF, 12EG and 12EH —

“Ningaloo Marine Park” means all waters of the Indian Ocean and Exmouth Gulf within the boundaries of the Ningaloo Marine Park Reserve No. 2 shown on Plan No. 1735;

"Ningaloo Marine Park Land Zone" means all land —

- (a) between 23° 34' south latitude (Amherst Point) and 21° 53' south latitude and west of the Minilya-Learmonth and Murat Roads, but excluding the townsite of Exmouth; and
- (b) on North West Cape, north of 21° 53' south latitude;

"one day" means a period of 24 hours commencing at midnight;

"Plan No. 1735" means the Department of Conservation and Land Management plan No. 1735 held for public inspection by the Fisheries Department.

Possession of fish within Ningaloo Marine Park

12EC. (1) A person shall not, within Ningaloo Marine Park, have in his possession or in a boat any fish other than whole fish.

Penalty: \$1 000.

(2) Notwithstanding subregulation (1), a person may have in his possession within Ningaloo Marine Park —

- (a) gilled and gutted fish; and
- (b) filleted mackerel of the family *Scombridae*.

(3) Subsection (2) (b) does not apply unless a fish is filleted so that —

- (a) each fillet consists of one complete side of the fish, excluding the head and backbone; and
- (b) the skin and pectoral fin are intact and attached to each fillet.

Bag limits within Ningaloo Marine Park and Ningaloo Marine Park Land Zone

12ED. (1) Notwithstanding regulation 3AB, the bag limits prescribed by this regulation apply in respect of Ningaloo Marine Park and Ningaloo Marine Park Land Zone.

(2) The bag limit appearing directly opposite an item in Table 1 or Table 2 is the prescribed bag limit for one day in respect of fish of the species referred to in that item.

(3) If an item in Table 1 or Table 2 refers to 2 or more species of fish, the prescribed bag limit applies in respect of fish that consist of one of those species or any combination of those species.

(4) If fish consist of any species, or any combination of species, other than the species referred to in Table 2, the prescribed bag limit for one day in respect of that species, or combination of species, is 7 fish, but this does not authorize the bag limit prescribed opposite any particular item in Table 1 to be exceeded.

(5) A person shall not —

- (a) bring into Ningaloo Marine Park;
- (b) take while within Ningaloo Marine Park; or
- (c) bring ashore into Ningaloo Marine Park Land Zone,

any fish in excess of the bag limits prescribed by this regulation.

Penalty: \$1 000.

**BAG LIMITS FOR NINGALOO MARINE PARK AND
NINGALOO MARINE PARK LAND ZONE**

TABLE 1

(Reg. 12ED)

Fish	Bag limit for one day
Cobia (<i>Rachycentron canadus</i>)	4
Cods (a) (<i>Serranidae</i> family)	4
(b) (<i>Epinephelus</i> spp.) in excess of 30kg in weight or in excess of 1 200 mm in length	0
Coral Trout (<i>Plectropomus</i> spp.) and Coronation Trout (<i>Variola louti</i>)	1
Dolphinfish (mahi mahi) (<i>Coryphaena hippurus</i>)	4
Mackerel, Spanish (<i>Scomberomorus spp.</i>)	4
Mackerel, wahoo and shark (<i>Acanthocybium solandri</i> , <i>Grammatorcynus bicarinatus</i>)	4
Mulloyay (<i>Argyrosomus hololepidotus</i>) and black jewfish (northern mulloyay) (<i>Protonibea diacanthus</i>)	
(a) between 45 cm and 70 cm in length	3
(b) over 70 cm in length	1
Queenfish (<i>Scomberoides commersonianus</i>)	4
Samson fish (<i>Seriola hippos</i>)	4
Sharks (All spp.)	4
Tuna, Southern bluefin (<i>Thunnus maccoyii</i>)	4
Yellowtail kingfish (<i>Seriola lalandi</i>) ..	4

TABLE 2

Fish	Bag limit for one day
Mullet, Sea and Yellow Eye (<i>Mugil cephalus</i> , <i>Aldrichetta forsteri</i>)	40
Whiting, Sand or School (<i>Sillago spp.</i>)	40
Tailor (<i>Pomatomus saltatrix</i>)	20
Octopus, Squid and Cuttlefish (all species of Cephalopods of the sub class <i>Caleoidea</i>)	15
Rock Lobster, Western and Tropical (<i>Panulirus spp.</i>)	4
Threadfin Salmon and Bluenose Salmon (<i>Polydactylus spp.</i>)	20
Cockle (Ark shell) (<i>Anadara trapezia</i>)	} 2 litres
Venus clams (all species of the genus <i>Katelysia</i>)	
All other species of edible molluscs not specifically mentioned in this Table	

**Boats used for taking rock lobsters
in Ningaloo Marine Park**

12EE. (1) Notwithstanding the prescribed bag limit under regulation 12ED, a boat that is being used within Ningaloo Marine Park for taking rock lobsters shall not be used to hold or transport more than 8 rock lobsters in any one day unless —

- (a) the boat is licensed under regulation 2; and
- (b) taking rock lobsters is authorized under section 32.

(2) A person in charge or control of a boat that is used contrary to subregulation (1) commits an offence.

Penalty: \$1 000.

**Fish and rock lobsters within
Ningaloo Marine Park Land Zone
to be labelled**

12EF. (1) In this regulation —

“fish” means whole fish, portion of fish or package of fish, but excludes rock lobster;

“other fish” means, in the definition of “prescribed quantity of fish”, whole fish or portion of fish, but excludes rock lobster;

"package" means any type of wrapping, package, or container;

"prescribed quantity of fish" means the greater amount by weight of either —

- (a) 10 kg of fish and 7 other fish; or
- (b) 17 kg of fish.

"rock lobster" means whole rock lobster or package of rock lobster;

"stores" includes, in relation to fish or rock lobsters, the act of placing in a refrigerator, freezer, icebox, or other means of storage.

(2) A person who, within Ningaloo Marine Park Land Zone, has in his possession or stores any fish (other than cephalopods) or rock lobsters shall attach a label to each fish or rock lobster.

(3) For the purposes of subregulation (2) a label shall —

- (a) be not less than 75 mm in length and 25 mm in width;
- (b) have legibly written on it the full name of the owner of the fish or rock lobster to which it is attached;
- (c) be attached externally to the fish or rock lobster in such a manner that it is clearly visible to an Inspector.

(4) The person referred to in subregulation (2) shall ensure that a label, which conforms to this regulation, remains attached to each fish or rock lobster while the fish or rock lobster is within Ningaloo Marine Park Land Zone.

(5) Notwithstanding the bag limits prescribed by regulation 12ED, a person shall not, within Ningaloo Marine Park Land Zone, have in his possession or store more than the prescribed quantity of fish and 8 rock lobsters.

(6) A person who has in his possession or stores any fish or rock lobsters contrary to this regulation commits an offence.

Penalty: \$1 000.

Presumption of possession or storing

12EG. (1) Where an Inspector finds fish or rock lobsters within Ningaloo Marine Park Land Zone that he reasonably suspects are the subject of an offence under regulation 12EF, and the Inspector is unable at the time of finding to determine who is in possession of or stored those fish or rock lobsters, any person —

- (a) in a vehicle; or

- (b) using a refrigerator, freezer, icebox, or other means of storage,

in which the fish or rock lobsters are found shall be deemed to be in possession of or to have stored the fish or rock lobsters, as the case may be.

- (2) In this regulation —

“fish” and “rock lobster” have their respective meanings as in regulation 12EF.

Exemptions from regulations 12EC to 12EG

12EH. Regulations 12EC, 12ED, 12EE, 12EF and 12EG do not apply to —

- (a) the holder of a professional fisherman's licence endorsed to permit the taking of fish within Ningaloo Marine Park;
- (b) the holder of a professional fisherman's licence using a boat operating under a Fishing Boat Licence, if the Fishing Boat Licence is endorsed to permit the use of that boat to take fish within Ningaloo Marine Park;
- (c) a person operating a business involving the storage, sale, or transportation of fish, if the person is operating in accordance with a written exemption from the Director;
- (d) bait fish of the family *Clupeidae* or *Engraulididae*.

By His Excellency's Command,

M. C. WAUCHOPE, Clerk of the Council.

HERITAGE COUNCIL OF WA

HR401

HERITAGE OF WESTERN AUSTRALIA ACT 1990 NOTICE OF INTENTION TO ENTER PLACES IN THE REGISTER OF HERITAGE PLACES

The Minister for Heritage, Jim McGinty MLA, has directed that the places described in Schedule 1 be entered in the Register of Heritage Places on an interim basis pursuant to section 47 (1) of the Heritage of Western Australia Act 1990.

In accordance with the requirements of section 49 (1) of that Act, the Heritage Council of Western Australia hereby gives notice that it intends to enter those places in the Register of Heritage Places.

The Council will supply, on request, a statement giving details of each place including the assessment of its cultural heritage significance.

Submissions on the proposed entries are invited from interested persons. Submissions must be in writing and should be forwarded to the following address:

The Director
Office of the Heritage Council
PO Box 620
East Perth WA 6892

Submissions concerning entries of places listed in Schedule 1 must be lodged by 28th July 1992.



HON GORDON HILL, JP, MLA
 MINISTER FOR SMALL BUSINESS; MINES;
 FISHERIES; ASSISTING THE PREMIER ON
 EMPLOYMENT, TRADE AND INVESTMENT

11th Floor, 214 St. George's Terrace, Perth, Western Australia 6000
 TELEPHONE: Metropolitan (09) 481 3244, Country 008 199 135
 FACSIMILE: (09) 481 4613

[tsaw3cky]

22 SEP 1992

Hon Tom Helm MLC
 Parliament House
 PERTH WA 6000

OUR REFERENCE

17657

Dear Tom

I refer to our conversation earlier this week and in particular to State Fisheries Legislation.

At present a Departmental report which totally reviewed the existing Fisheries Act is with Parliamentary Counsel. Subject to other legislative priorities, I will be endeavouring to have this Bill introduced in the Autumn session next year. The "New Fisheries Act" is anxiously awaited by the Department, industry and the wider community.

Due to new management measures for the rock lobster fishery Cabinet recently approved the interim drafting and introduction in the current session of Parliament of a number of amendments to the Fisheries Act that are necessary in accommodating these changes.

At the same time Cabinet took the opportunity to include with these amendments the statutory creation of the "Recreational Fishing Trust Account" which was announced last year as an integral part of the future management of our recreational fishery.

Yours sincerely

Gordon Hill, JP, MLA
 MINISTER FOR FISHERIES

ELECTORAL COMMISSION

EL401

**MARKETING OF EGGS ACT 1945
ELECTION NOTICE**

Election of One Elective Member to the Board

Commercial Producers are hereby notified that it is intended to hold an election to fill the vacancy in the Western Australian Egg Marketing Board which will occur on 2 August 1992 due to the effluxion of time.

The following dates have been fixed—

Roll Closes—Monday, 22 June 1992 at 12 o'clock, noon

Nominations Close—Monday, 13 July 1992 at 12 o'clock, noon

Close of Poll in the Event of a Context—Monday, 27 July 1992.

Nominations must be in writing, signed by the candidate and countersigned by the Proposer and Seconder, both of whom shall be persons enrolled on the electoral roll to be used in the election.

Nominations must reach my office—

Western Australian Electoral Commission
4th Floor, 480 Hay Street
Perth WA 6000
(GPO Box F316, Perth 6001)

no later than noon Monday, 13 July 1992.

H. FELIX, Returning Officer.

FISHERIES

FI301

FISHERIES ACT 1905**FISHERIES AMENDMENT REGULATIONS (NO. 6) 1992**

Made by His Excellency the Governor in Executive Council.

Citation

1. These regulations may be cited as the *Fisheries Amendment Regulations (No. 6) 1992*.

Commencement

2. These regulations shall come into operation on 1 July 1992.

Principal regulations

3. In these regulations the *Fisheries Regulations 1938** are referred to as the principal regulations.

[* Reprinted as at 15 September 1988.
For amendments to 5 May 1992 see 1991 Index to Legislation of Western Australia, pp. 324-25 and Gazettes of 31 January, 28 February and 27 March 1992.]

Regulation 3A amended

4. Regulation 3A of the principal regulations is amended by inserting after subregulation (4) the following table —

“

TABLE

<u>Item</u>	<u>Activities</u>
1.	Taking rock lobster
2.	Taking marron
3.	Taking abalone
4.	Taking trout, redfin perch or freshwater cobbler
5.	Using a set gillnet or hauling gillnet

”

Regulations 15I and 15J inserted

5. After regulation 15H of the principal regulations the following regulations are inserted —

Taking of abalone by a person other than a professional fisherman

“

15I. A person shall not take or attempt to take abalone (*Haliotis spp.*) unless the person is the holder of a —

- (a) professional fisherman's licence; or
- (b) recreational fishing licence specifying that the holder may take abalone.

Southwest freshwater angling

15J. A person shall not take or attempt to take in any river, stream, brook, creek, lake or dam south of 26° south latitude, any of the species of fish listed in the table to this regulation unless the person is the holder of a —

- (a) licence granted under section 39C of the Act authorizing the holder to; or
- (b) recreational fishing licence specifying that the holder may,

take those species of fish.

TABLE

<u>Item</u>	<u>Species of Fish</u>
1.	Brown trout (<i>Salmo trutta</i>)
2.	Rainbow trout (<i>Onchorhynchus mykiss</i>)
3.	Freshwater cobbler (<i>Tandanus bostocki</i>)
4.	Redfin perch (<i>Perca fluviatilis</i>)

”

Regulation 26F amended

6. Regulation 26F of the principal regulations is amended by deleting paragraph (b) and substituting the following paragraph —

- “ (b) take any trout in excess of the daily bag limit prescribed for that species of fish in Part A of the Schedule to regulation 3AB; ”

Schedule amended

7. The Schedule to the principal regulations is amended by deleting item 2A and substituting the following item —

- “ 2A. Recreational fishing licence (reg. 3A) —
- | | | |
|---|----|---|
| (a) Taking rock lobster | 20 | |
| (b) Taking marron | 15 | |
| (c) Taking abalone | 20 | |
| (d) Taking trout, redfin perch or
freshwater cobbler | 10 | |
| (e) Using a set gillnet or
hauling gillnet | 15 | |
| (f) All the activities specified
in paragraphs (a) to (e)
endorsed on one licence | 50 | ” |

By His Excellency's Command,

M. C. WAUCHOPE, Clerk of the Council.

FI401

FISHERIES ACT 1905
PART IIIB—PROCESSING LICENSES

FD 664/91.

The public is hereby notified that I have issued a permit to Brian Peter Byass of 31 Starling Street, Hamilton Hill 6163, to establish a processing establishment to process fish in pursuance of the provisions of section 35C of the Fisheries Act 1905, on board licensed fishing boat “Shark Raider” registered number LFB F325, subject to the following conditions.

That the processing establishment—

1. Shall comply with the requirements of the Fisheries Act 1905, and all Regulations, Orders in Council and Notices and Ministerial Directions issued thereunder.
2. Shall not be used for the processing of rock lobster, prawns, abalone, tuna, salmon or scallops.
3. Shall comply with the requirements of the Health Act 1911 (amended).
4. Shall be registered as an export establishment pursuant to the provisions of the Parliament of the Commonwealth Export Control Act 1982, and Orders made thereunder, more specifically the Prescribed Goods (General) Orders and the Fish Orders, should it be used to process fish for export.
5. Shall not be used for the processing of marron (*Cherax tenuimanus*) unless a licence is held under section 39C of the Fisheries Act 1905.
6. Shall not be used for the processing of fish or crustacea caught by any other vessel.

In accordance with the provisions of section 35K, any person aggrieved by this decision, may within fourteen days after publication of this notice, appeal against the decision or order by serving on the Minister for Fisheries a statement in writing on the grounds of their appeal.

P. P. ROGERS, Executive Director.

5.9 Licensing and Funding

The committee considers that the single most critical issue for the future management of recreational fishing is the availability of funds for management programs.

Without adequate funding to implement the strategies outlined in this report, recreational fishing will continue to function without the necessary management for key angling species.

Many of the public submissions strongly urged the committee to resolve the issue of funding. Further, they suggested that the entire review process could turn out to be a complete waste of time if funds were not made available.

Realistically, the committee considered that there are two major approaches for funding recreational fishing management.

One approach is the specific allocation of a share from Commonwealth sales tax levy on fishing gear and associated fishing expenditure, to the states, for the management of recreational fishing. This approach can only be resolved at a Commonwealth level, but was seen by the committee as the fairest method of providing funds for the management of angling. A specific state allocation of about \$2.5 million a year would need to be sought from the Commonwealth.

The approach of a sales tax sharing arrangement should be pursued at a federal level through the Australian Fisheries Council of Fisheries Ministers, chaired by Primary Industries Minister John Kerin. Further comment on the case for such action is identified in section 5.10.

Research by the committee has identified a federal-state tax sharing arrangement in the U.S.A. which could provide a lead to the Federal Government in Australia.

In the United States, the Wallop-Breaux Fund is a national body which, by legislation, distributes monies raised by the Federal Aid in Sports Fish Restoration Act.

The principle of the original Federal Aid in Sports Fish Restoration Act was to reappropriate motor boat fuel tax revenues to the Wallop-Breaux Fund. Later amendments then included a provision that directed reallocation of these funds into two accounts - the Boating Safety Account and the Sport Fishing Restoration Account.

The latter also receives manufacturers' excise tax revenue from fishing equipment and import duties on fishing equipment and boats.

The Wallop-Breaux Fund allocates federal funds raised from fuel tax, excise tax and import duties back to the states. These funds are dedicated to the management of recreational fishing.

However, the committee recognises that the federal option is a longer-term strategy and cannot address the immediate needs of providing funds for recreational fishing management in WA. This can only be achieved by a WA-based licensing system, which has the advantage of being totally under state control.

Many of the submissions strongly supported the principle of a recreational fishing licence, provided that funds were held in a watertight trust fund exclusively for the use of recreational fisheries management.

However, there was strong opposition, particularly from the South-West, to the concept presented in the discussion paper of a general recreational fishing licence.

An all-embracing recreational fishing licence at best drew only qualified support; and at worst was strongly opposed in the majority of public submissions.

Many people were against general licensing for an array of subjective reasons including: it is un-Australian; that recreational fishing is part of our heritage and one of the few remaining freedoms; and that it would be just more government/big brother interference.

Others complained that they were already paying through sales tax on fishing tackle and licence fees for vehicles, boats, trailers, radios etc.

There was also opposition from people who thought licensing would be impractical, unenforceable, and result in funds being swallowed up by administrative costs. However, the committee identified a significant swing in favour of general licensing towards the end of the public discussion period.

On balance, the committee considers that a general licence would be inappropriate at this time, but it believes that in the long term such a measure may well become necessary.

Meanwhile, as a more immediate approach to raising funds, there is a strong case for restructuring the existing licence arrangements to include the most popular and valuable recreational species. These licences would apply to interstate and international visitors, as well as all West Australian residents.

The crab, prawn and abalone recreational fisheries demand the greatest expenditure and resources in the areas of enforcement, management and education.

In addition, freshwater fisheries such as trout and marron, and the rock lobster and netting fisheries, need intensive management and enforcement to ensure their long-term sustainability.

All these fisheries provide high value, high quality seafood for home consumption. They also offer thousands of West Australians a superb and continuing form of recreation in easily accessible populated areas.

Therefore the committee believes that it is reasonable for users of these fisheries to contribute to their long-term management, and in doing so help provide funds for the integrated management of recreational fishing throughout the state.

The committee considers that a cost effective and easily accessible licensing system which incorporates these species can provide sufficient funding for the overall management of recreational fishing.

This system should comprise six categories: the existing three categories of rock lobster, net fishing and marron, and in addition three new categories to cover South West freshwater angling (redfin perch and trout and freshwater cobbler), abalone, prawns and crabs.

The licence fee proposed for each category is as follows:

Rock lobster	\$20
Marron	\$15
Net fishing	\$15
Abalone	\$15
South West freshwater angling	\$15
Prawns and crabs	\$10

In setting these fees, the committee was aware of the considerable management already provided for these species, their high intrinsic value and level of charges in other Australian states.

For a person who undertook all of these forms of fishing, annual licensing costs would be \$90 per year. While some might consider this excessively high, such a situation is likely to be exceptional.

The committee was not persuaded to introduce a lower umbrella licence fee for all categories due to the impact on revenue.

In estimating the revenue raised from licensing, 50 per cent rebates for pensioners, seniors card holders and children were taken into account.

The committee considers it vitally important that fishing licences be easy to obtain from a maximum number of outlets near centres of fishing activity. Further, the cost of collecting licence fees should be minimised.

Australia Post offers an electronic counter service, which the committee believes can fulfil all the requirements for a cost effective licence system.

Australia Post has over 400 outlets throughout WA, all of which could issue fishing licences. Some of these are open outside normal office hours on weekends and public holidays.

This system is also capable of significantly reducing the administration costs involved in issuing licences.

All licence fees should be placed in a special trust account dedicated to the management of recreational fishing. The terms of the trust account need to allow for the use of funds for specific sponsored projects.

The committee has identified the funding of education and research as priorities. Fuller details of costs and revenue implications are identified in Section 5.10 covering the strategies outlined in this report.

The committee believes that funds for artificial reefs, FADs, fishing platforms, fishing dams and other stock enhancement programs should also be sought from the private sector in the form of sponsorship. This should be catered for in the administration of the proposed recreational fishing management trust fund.

Following are the licence fees charged in other states:

South Australia	
Netting	\$17
Rock lobster	\$17
Total	\$34

Victoria

Amateur fishing licence (includes inland fishing, yabbie pots and rock lobster)	\$55
Netting	\$35
Total	\$90

Tasmania

Non-commercial diver's licence (abalone, rock lobster, scallops)	\$35
Non-commercial pot licence (rock lobster)	\$35
Inland fishing licence	\$35
Total	\$105

The Northern Territory, Queensland, and New South Wales do not have any recreational fishing licensing.

Recommendation 55 - No general recreational fishing licence

No general fishing licence should be introduced at this stage in the development of recreational fishing management.

Recommendation 56 - Extended licence categories

The existing recreational fishing licences required for rock lobster, netting and marron should be extended as follows:

Rock lobster	\$20
Net fishing	\$15
Marron	\$15
South-West freshwater angling (trout, redfin perch, freshwater cobbler)	\$15
Abalone	\$15
Prawns and crabs	\$10

Recommendation 57 - Trust fund for fees

All revenue collected from recreational fishing licences should be placed in a special Trust Account, dedicated to recreational fishing management in WA.

Recommendation 58 - Licence issuing

Recreational fishing licences should be issued for a minimum cost, and through a maximum number of outlets.

The committee considers that Australia Post appears to offer the most cost effective and widespread service now available through its electronic counter service facility.

Recommendation 59 - Funding priorities

The committee has identified that education and research should receive first priorities for funding.